

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case Nos: 25-CA-239166, 25-CA-244670, 25-CA-245763 &
25-RC-243735

NEEDHAM EXCAVATING, INC.,

Respondent,

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL
150, AFL-CIO,

Charging Party.

Place: Video Conference

Date: April 22, 2021

Pages: 1 through 297

Volume: 1 of 4

OFFICIAL REPORTERS

ARS REPORTING

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

(913) 422-5198

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25

In the Matter of:

NEEDHAM EXCAVATING, INC.,

Respondent,

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150, AFL-CIO,

Charging Party.

Case 25-CA-239166

Nos. 25-CA-244670

25-CA-245763

25-RC-243735

The above-titled matter came on for hearing via
video conference, pursuant to Notice, before **THE**
HONORABLE SHARON L. STECKLER, Administrative Law Judge,
on Thursday, the 22nd of April, 2021, at 9:09 a.m.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

A P P E A R A N C E S

On Behalf of the General Counsel:

RAIFAEL WILLIAMS, ESQ.
National Labor Relations Board - Region 25
Minton-Capehart Federal Building
575 North Pennsylvania Street, Room 238
Indianapolis, Indiana 46204
Phone: (317) 991-7630
Fax: (317) 226-5103
E-mail: raifael.williams@nlrb.gov

On Behalf of the Respondent:

STANLEY NIEW, ESQ.
JEFFREY WRIGHT, ESQ.
Law Offices of Stanley E. Niew, P.C.
1000 Jorie Boulevard, Suite 206
Oak Brook, Illinois 60523
Phone: (630) 586-0110
Fax: (630) 586-0120
E-mail: sniew@senlaw.net
jwright@pappaswright.com

ARS REPORTING LLC

22052 West 66th Street, Suite 314
Shawnee, Kansas 66226
Phone: (913) 422-5198

A P P E A R A N C E S

(Continued)

On Behalf of the Charging Party:

ELIZABETH A. LaROSE, ESQ.

JAMES CONNOLLY, ESQ.

International Union of Operating Engineers,

Local 150, AFL-CIO, Local 150 Legal Department

6140 Joliet Road

Countryside, Illinois 60525

Phone: (708) 579-6633

Fax: (708) 588-1647

E-mail: elarose@local150.org

Courtroom Deputy:

SONJA SPIELBERG

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>V/D</u>	<u>COURT</u>
JOE NEEDHAM	35 94	181	180 190			
NICK NEEDHAM	192 228					

1

E X H I B I T S

2

3

EXHIBITS**FOR IDENTIFICATION****IN EVIDENCE**

4

5

GENERAL COUNSEL

6

1

10

Not Offered

7

2

58

59

8

11

62

84

9

12

90

218

10

11

CHARGING PARTY/UNION

12

6

136

138

13

9

27

28

14

11

28

28

15

17

125

130

16

18

107

110

17

19

110

113

18

20

149

150

19

25

140

141

20

32

280

282

21

33

153

155

22

34

273

275

23

39

239

241

24

40

227

227

25

(Continued)

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1

E X H I B I T S

2

3

EXHIBITS**FOR IDENTIFICATION****IN EVIDENCE**

4

5 CHARGING PARTY/UNION (Continued)

6

41

283

283

7

44

29

29

8

45

277

280

9

46

253

263

10

47

241

251

11

50

267

270

12

51

270

273

13

52

30

30

14

53

30

Not Offered

15

55

223

226

16

58

31

32

17

61

32

33

18

64

23

26

19

65

23

26

20

67

227

227

21

71

114

124

22

72

223

226

23

77

285

286

24

25

(Continued)

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

EXHIBITS **FOR IDENTIFICATION** **IN EVIDENCE**

CHARGING PARTY/UNION (Continued)

78	286	287
79	287	288
80	170	172

P R O C E E D I N G S

[Time Noted: 9:09 a.m.]

THE HONORABLE JUDGE SHARON STECKLER: Okay.

Mr. Molinaro is our Court Reporter, and Ms. Spielberg is our Deputy, so we are on the record this morning.

Good morning.

The hearing will be in order.

This is a formal trial before the National Labor Relations Board in Needham Excavating, Inc., Case Numbers 25-CA-239116, 25-CA-244670, 25-CA-245763, consolidated with the representation case, 25-RC-243735. We are hearing on objections and challenges.

The Administrative Law Judge presiding is Sharon L. Steckler. I am assigned to the Washington, D.C. Office of the Division of Judges. Any communications should be addressed to that office, and any requests for extensions of time should be addressed to Chief Judge Giannasi or Deputy Chief Judge Amchan in that office.

Will Counsel and representatives for the parties please state their appearances for the record?

For General Counsel?

MR. WILLIAMS: Yes, Raifael Williams for the General Counsel, Your Honor.

JUDGE STECKLER: For the Charging Party and

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Petitioner, International Union of Operating Engineers
2 Local 150?

3 MS. LaROSE: Elizabeth LaRose, Your Honor, and
4 James Connolly.

5 MR. CONNOLLY: Good morning, Your Honor.

6 JUDGE STECKLER: Thank you.

7 For the Employer and Respondent?

8 MR. NIEW: Stanley Niew.

9 MR. WRIGHT: And Jeffrey Wright.

10 JUDGE STECKLER: Thank you.

11 If settlement discussions are desired at any time
12 during the trial, I will be glad to grant a reasonable
13 recess for that purpose. Trial developments sometimes
14 change attitudes and make settlement possible.
15 Accordingly, I am advising you now before I have heard
16 any of the testimony, that I intend to offer
17 opportunities for settlement discussions at two specific
18 times. One is at the close of the General Counsel's
19 case, and second, at the conclusion of the hearing. If
20 by inadvertence I overlook the matter, please call it to
21 my attention.

22 I invite you to bear in mind that as the trial
23 proceeds, that opportunities for discussion of
24 settlement will be available at all times upon request.

25 Mr. Williams, you may present the Formal Documents

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 at this time, the Formal Papers, and then after that, I
2 will dispense with -- we will dispense with any
3 preliminary matters.

4 MR. WILLIAMS: Okay, procedurally, how do you want
5 me to do that? Do you want me to share my screen to
6 show the Formal Papers?

7 **(General Counsel's Exhibit 1, marked for**
8 **identification.)**

9 JUDGE STECKLER: Yes. Has everybody had an
10 opportunity to look at the Formal Papers?

11 MR. NIEW: I did, and I have no objections to them.

12 JUDGE STECKLER: Okay.

13 MR. WRIGHT: Judge, this is Jeff Wright.

14 I just have one question and maybe it was just my
15 copy, and Mr. Williams, you can let me know on this.

16 MR. WILLIAMS: Okay.

17 MR. WRIGHT: On the Index and Description of the
18 Formal Documents, Exhibit 1(q) references the charge
19 that was filed June 3rd of 2020 in Case No. 25-CA-
20 261188, but when I was trying to look at that last
21 night, I turned to that exhibit, it was - what was
22 marked as 1(q) was Charge 244670, which is one of the
23 charges concerning one of the alleged discriminatees,
24 Adam VanOpDorp, and I could not find the June 3rd, 2020
25 case, that 261188, in the Formal Documents, so I don't

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 know if that one got put in by mistake, and the other
2 one got left out. I couldn't locate it.

3 MR. WILLIAMS: Okay, let me --

4 MR. WRIGHT: And I might have missed it, as well,
5 but I tried to go through it as well as I could.

6 [Long pause]

7 MR. WILLIAMS: So, yes, it looks like it was
8 inadvertently left out, and so it also would be mis-
9 numbered.

10 So, how do you want to handle that, Your Honor? I
11 can --

12 JUDGE STECKLER: I think --

13 MR. WILLIAMS: -- move for the admission of the
14 Formal Papers with the understanding that it would be
15 amended later, because I would have to go back to our
16 support staff and --

17 JUDGE STECKLER: I -- I think move for it later
18 with the support -- on a break, let the support staff
19 know to fix it, and I was wondering if the Zoom order
20 was in there also? It also needs to be in there.

21 MR. WILLIAMS: The Zoom order is in there, Your
22 Honor.

23 JUDGE STECKLER: Okay. Just correct the Index
24 because it would be reflected in the Index.

25 No, it doesn't look like it, so the Zoom order

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 should also go in as well.

2 [Long pause]

3 JUDGE STECKLER: Okay, so we will get that resolved
4 later today hopefully, depending on the availability of
5 support staff in Region 25.

6 And then, preliminary matters also, just a
7 reminder, if people need to order transcripts, to let
8 Mr. Molinaro order and get your orders in with him.

9 Also, a preliminary matter, there was a subpoena I
10 promised to rule on this morning. Local 150 filed a
11 motion -- a Petition to Revoke on April 19 on
12 Respondent's Petition, so -- excuse me, subpoenas, for
13 reasons stated in Ms. LaRose's Petition to Revoke, items
14 relating to Items 2 through 4 go to the alleged
15 discriminatees mitigating losses, that type of
16 information is relevant only in the compliance phase.
17 So, at this time, the motion is granted.

18 Any other preliminary matters that we need to deal
19 with at this time?

20 MS. LaROSE: Mr. Williams, I am going to let you go
21 first, and Your Honor, after Mr. Williams, I have got a
22 few things.

23 JUDGE STECKLER: Okay.

24 MR. WILLIAMS: So, General Counsel would like to
25 move for sequestration.

1 JUDGE STECKLER: Objections?

2 MR. NIEW: None.

3 MS. LaROSE: No.

4 JUDGE STECKLER: Okay. Okay, I will go ahead and
5 read the Sequestration Order then.

6 Counsel has involved a rule requiring that the
7 witnesses be separated or sequestered. This means that
8 all persons who are going to testify in this proceeding,
9 with specific exceptions that I will tell you about, may
10 be present in the hearing room only when they are giving
11 testimony. The exceptions are alleged discriminatees,
12 natural persons who are parties, representatives of non-
13 natural parties, and a person who is shown to be a party
14 who is essential to the presentation of the party's
15 cause. They may remain in the courtroom even if they
16 are going to testify or have testified. Alleged
17 discriminatees including the Charging Parties, however,
18 may not remain in the courtroom when other witnesses on
19 behalf of the General Counsel or the Charging Party are
20 giving testimony regarding the same events that the
21 alleged discriminatees are going to testify about, or
22 are expected to testify about.

23 The rule also means that from this point on, until
24 the hearing is finally closed, the witness -- no witness
25 may discuss with other potential witnesses either the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 testimony that they have given or that they intend to
2 give; in addition for the observers, anything that you
3 have heard. The best way to avoid any problems is
4 simply not to discuss the case with any other potential
5 witness until after the trial is completed.

6 Under the rule as applied by the Board, with one
7 exception, counsel for a party may not, in any manner,
8 including by showing of transcripts of testimony, inform
9 a witness about the content of the testimony given by a
10 preceding witness, without the express permission of the
11 Administrative Law Judge. The exception is, however,
12 Counsel for a party may inform Counsel's own witness of
13 the content of the testimony, including the showing of
14 transcripts of testimony given by a witness for the
15 opposing side, in order to prepare for rebuttal of such
16 testimony.

17 I expect Counsel to police the rule and to bring
18 any violation of it to my attention immediately. It is
19 the obligation of Counsel to inform potential witnesses
20 who are not now present in the courtroom, of their
21 obligations under the order.

22 And just for the record, will the Union identify
23 its observer for this proceeding?

24 MS. LaROSE: Yes, Your Honor, that is Ryan Drew,
25 D-r-e-w.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Thank you.

2 And for the Employer?

3 MR. NIEW: Nick Needham, N-e-e-d-h-a-m.

4 JUDGE STECKLER: Thank you.

5 And if there are any questions as we go along,
6 please do not hesitate to ask.

7 Any other general preliminary matters, General
8 Counsel?

9 MR. WILLIAMS: Yes. We can maybe discuss it a bit
10 later down the road, but there are -- there is -- with
11 respect to discipline and potential layoffs, what I have
12 -- what General Counsel has received is like a
13 compilation of people -- regarding people who have been
14 disciplined with discharge and who are laid off, but I
15 didn't see the underlying documents supporting that in
16 the subpoenaed documents. So --

17 JUDGE STECKLER: So you are saying the subpoena is
18 perhaps not complete?

19 MR. WILLIAMS: So there is a list that obviously
20 the Respondent prepared, list -- there are only three
21 people who were discharged in the timeframe requested,
22 but there are no underlying documents regarding that,
23 and the same thing for people who are allegedly -- who
24 have been allegedly laid off.

25 JUDGE STECKLER: Okay.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WRIGHT: Judge, if I may?

2 JUDGE STECKLER: Mr. Wright, yes.

3 MR. WRIGHT: My understanding, and Nick Needham is
4 here and he obviously assisted in compiling the
5 information that we produced, we may have personnel
6 files, but there was no documents responsive to show, to
7 my understanding, "So-and-so was fired on that date,"
8 "So-and-so was laid off," with the exception of we did
9 provide some layoff material from the Unemployment
10 Office regarding those individuals. But, because of
11 that, for ease of reference, Nick created the
12 spreadsheets that Mr. Williams is referring to.

13 We can certainly check the personnel files for
14 those individuals, but I -- my understanding was that
15 there were not documents showing discipline for those
16 people, or even, you know, letters of termination and
17 that kind of thing, and that is why there wasn't any.

18 JUDGE STECKLER: Okay, so there are no responsive
19 documents.

20 MR. WRIGHT: Right.

21 JUDGE STECKLER: Okay. Would you mind just
22 checking to be sure, and if it comes to pass that there
23 are some, Mr. Williams would have the right to recall
24 witnesses as needed, okay?

25 Mr. Williams, anything further --

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WILLIAMS: No, Your Honor.

2 JUDGE STECKLER: Okay. Thank you.

3 For the Employer?

4 MR. NIEW: Nothing at this time.

5 JUDGE STECKLER: Ms. LaRose?

6 MS. LaROSE: Yes, Your Honor.

7 We -- most of the documents that we received from
8 the Employer in regard to -- both Employers in regard to
9 our subpoenas were a tax return -- were supposed to be a
10 tax return for each employer.

11 Your Honor will recall that you granted the -- I'm
12 sorry, denied the Employer's Petition to Revoke as it
13 related to the tax returns, and the Union requested tax
14 returns, including all schedules. We did not get those.
15 What we got were -- for K & K, it is apparently filed as
16 a sole proprietorship, may be an LLC as far as state
17 laws are concerned, but what that means is that Joe
18 Needham's tax return filing is implicated here, and the
19 Employer, therefore, took it upon itself to take -- to
20 produce one page of that tax return that says, Schedule
21 D - Sole Proprietorship K & K, and then blacked out
22 everything on it. There are no numbers in it, so it is
23 almost a completely useless document.

24 Then, with respect to Needham Excavating, which
25 apparently files its own tax return, they took that tax

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 return and blacked every number out of it, almost every
2 number out of it, except for I think a retained earnings
3 number.

4 Your Honor put in her order that if things needed
5 to be redacted, you know, if we were going to introduce
6 those into evidence, Your Honor would suggest to the
7 parties that we could look into redaction at that point.
8 There was nothing saying that the parties were entitled
9 to exercise their own independent discretion about what
10 they thought was relevant after Your Honor has already
11 ruled on it.

12 So, I am asking again for unredacted copies of
13 those tax returns in conformance with your order.

14 MR. NIEW: This is Stanley Niew.

15 Number one, Joseph Needham's tax return personally
16 was never asked for. What Joseph Needham did, or his
17 accountant did, is he prepared a Schedule C, which is a
18 Profit or a Loss from a business, and redacted anything
19 that had to do with a profit, loss, income, gross sales,
20 which is nobody's business at this stage and is not
21 relevant. I did leave in what the insurance was and all
22 of the wages paid, plus repairs and maintenance. There
23 is nothing else that the Employer can produce.

24 Number two, as to the Needham and the K & K tax
25 returns, I did redact items, again, showing income,

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 profit, loss. I left in the Schedule of Depreciation
2 which is one of the things that the Union was interested
3 in, and it has been my practice since I have been doing
4 this, is don't give up tax returns without redactions.
5 I think that it is the burden of the Union or the
6 General Counsel, well, the General Counsel if they are
7 asking, the Union to show why the -- the blacked-out
8 areas, or the redacted areas are relevant to this
9 proceeding.

10 JUDGE STECKLER: In my order, I stated that those
11 were relevant, and that if there was going to be
12 admission into the record formally, that we would
13 examine what should be redacted at that time. Instead
14 what has happened is the Employer Respondent has taken
15 upon itself to do so pre-emptively.

16 At this point, Ms. LaRose, we have a couple -- I
17 would like to order Respondent to comply, however, it
18 appears, Mr. Niew, that you intend not to do so; is that
19 correct?

20 MR. NIEW: Yes, but if I may, I would like to
21 explain why.

22 In this Employer's experience, and my experience,
23 dealing with unions, once the unions see this
24 information, they tell everybody what the gross sales
25 are, and everything else, and that is not what we would

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 like to be granted at this time.

2 As to Your Honor's second question which was
3 whether we intend to comply, the answer is no.

4 JUDGE STECKLER: Okay, well, then there is no point
5 in --

6 MR. WRIGHT: Judge?

7 JUDGE STECKLER: Mr. Wright?

8 MR. WRIGHT: Would you entertain or consider an in
9 camera review of the unredacted tax returns for you to
10 decide further after you have seen the information,
11 versus -- at least my understanding as far as what Stan
12 also said, the reasons that the Union requested that
13 information, my understanding is that Mr. Niew left
14 those portions unredacted, and what we would request is
15 an in camera review by yourself prior to making an order
16 on -- on Ms. LaRose's objection to that.

17 MS. LaROSE: Your Honor, if I may?

18 JUDGE STECKLER: Go ahead, Ms. LaRose.

19 MS. LaROSE: The time for asking for this was
20 before the hearing, not putting Your Honor on the spot,
21 asking you to cut out of the hearing to look at
22 documents that they were ordered to produce. I mean,
23 they could have asked for a number of different
24 arrangements that might have addressed these concerns,
25 but what Respondent did incorrectly was to ignore the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Judge's order, go ahead and redact it itself, and now it
2 is acting for essentially a delay in the hearing to
3 accommodate its failure to comply with your order. Your
4 Honor, I don't think that is proper.

5 JUDGE STECKLER: Yeah, Respondent could have
6 requested a protective order early on and did not do so.
7 So, to protect its confidentiality here -- I -- I am
8 hesitant -- I can give a temporary protective order if
9 Respondent will produce the entire thing, and then we
10 can put it on in your briefs whether to make it
11 permanent or not.

12 MR. NIEW: I need to confer with my client, if you
13 don't mind, Your Honor.

14 JUDGE STECKLER: Okay, we will go off the record
15 for three minutes.

16 Off the record.

17 *[Off the record]*

18 THE COURT REPORTER: We are on.

19 JUDGE STECKLER: Thank you.

20 We are back on the record.

21 Mr. Niew?

22 MR. NIEW: Yes, we would entertain a protective
23 order, but we would like the protective order to be at
24 this stage that the tax returns will be only for the
25 eyes of the attorneys, and not any of their clients.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: I don't think that I can do that,
2 that they can be able to see it, but they would be under
3 the same confidentiality order as everybody else, but
4 during the length of the hearing and through the
5 briefing process, until my Decision comes out, at which
6 time we can -- you know, the parties can move to --
7 during the briefing process give rationale as to why
8 this information needs to continue to be maintained
9 under the protective order.

10 MR. NIEW: That's fine, Your Honor.

11 JUDGE STECKLER: Okay, so at this time, Respondent
12 has agreed to produce tax returns for K & K and for
13 Needham, unredacted, complete tax forms, under a
14 protective order which extends not only to the parties,
15 but also to their -- any representative they show them
16 to. They will continue to police this.

17 As part of the briefing process, the parties will
18 include whether this temporary order needs to be
19 extended to a permanent order.

20 Is everyone clear as to what the temporary
21 protective order includes?

22 MS. LaROSE: Yes.

23 MR. WILLIAMS: Yes, Judge.

24 JUDGE STECKLER: Thank you.

25 Ms. LaRose, are there any additional matters before

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 we proceed?

2 MS. LaROSE: Yes, Your Honor.

3 Prior to the hearing I had indicated to the parties
4 and Your Honor that we intended to introduce parts of
5 the Employer's subpoena response from the unit
6 determination proceedings, and we had hoped to be able
7 to try to stipulate to the introduction of certain of
8 those exhibits, because, you know, having to introduce
9 the whole thing, which was a pretty sizable response,
10 you know, there would be too much paper in the record
11 for everyone's liking.

12 We were unable to do that, and I understand the
13 Employer's reasons why, part of which is the function of
14 time, Your Honor, and I completely understood that. So
15 what I am going to try to do then, Your Honor, is I do
16 have the Employer's subpoena response in whole, marked
17 as Union's Exhibits 64 and 65, and since those are self-
18 authenticating relevant documents, because the
19 subpoenaed material in the unit determination proceeding
20 is very similar to the unit determination -- to the
21 subpoenaed material in this proceeding, I am going to go
22 ahead and move for admission of that, Your Honor.

23 **(Union's Exhibits 64 and 65, marked for identification.)**

24 MS. LaROSE: What I am going to try to do is the
25 smaller exhibits that I had marked, which I think it

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 will be a little bit easier for everyone to handle
2 because they are not as long, is I will use those like
3 demonstrative exhibits, and then move to mark and admit
4 those as we go along.

5 So, Your Honor, what I am hoping to do is to be
6 able to mark and admit certain of those now, if at all
7 possible.

8 JUDGE STECKLER: So, are you going to put them
9 under new numbers, or are you still using the numbers
10 from the pre-election representation case?

11 MS. LaROSE: So, Your Honor, I -- we had -- Mr.
12 Niew and I had an exchange about who actually Bates-
13 stamped the documents. Stan -- Mr. Niew, I think it was
14 actually my office that did do that. We Bates-stamped
15 those documents as soon as they came in, Your Honor, and
16 so there are -- for the K & K case response, everything
17 is sequentially Bates-stamped, and prefixed "K" on it,
18 and that is Union Exhibit No. 64, and then the subpoena
19 response from Needham, from the unit determination case,
20 is numbered -- is Bates-stamped in the lower right-hand
21 corner, and the prefix on those is "N," and that is
22 marked as Union Exhibit 65.

23 I would like to just move to admit those now, Your
24 Honor.

25 JUDGE STECKLER: Ms. LaRose, are you going to be

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 using the entire amount of documents that were submitted
2 during the representation case hearing?

3 MS. LaROSE: I -- so, Your Honor, there are a --
4 yes. I am going to be using, I believe, pieces and
5 parts, Your Honor, and in some cases, whole swathes of
6 the largest section of documents. I was going to
7 introduce -- I was going to introduce the subpoena also,
8 so that Your Honor could see how each set of documents
9 tied out to the subpoena in that case.

10 JUDGE STECKLER: General Counsel, do you have any
11 objection?

12 MR. WILLIAMS: No objection, Your Honor.

13 JUDGE STECKLER: Respondent Employer?

14 MR. NIEW: I am looking at the documents that she
15 had marked. One second, Your Honor.

16 JUDGE STECKLER: Okay.

17 [Long pause]

18 MR. WRIGHT: Judge, if we could have just one --
19 one minute, we are having a hard time finding the
20 documents and I am showing them on the screen.

21 JUDGE STECKLER: Ms. LaRose, if I recall from the
22 pre-hearing conferences, this is about 3,000 pages; is
23 that correct?

24 MS. LaROSE: It is, Your Honor.

25 JUDGE STECKLER: Well, I am not going to use any

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 bad language here, but that seems like that is a lot of
2 documents, but...

3 MS. LaROSE: But --

4 JUDGE STECKLER: That's okay. We will go off the
5 record for a moment while the Respondent confers.

6 *[Off the record]*

7 THE COURT REPORTER: We are on.

8 JUDGE STECKLER: Back on the record.

9 Mr. Niew?

10 MR. NIEW: Yes, it is my understanding that Ms.
11 LaRose wants to introduce all of those documents which
12 consists of several thousand pages. If that is what she
13 wants, I have no objection.

14 JUDGE STECKLER: Okay, Ms. LaRose, I am going to
15 warn you that I -- that if not everything is used, that
16 is problematic for overburdening the record, but you
17 will have to point out in your briefs what you are
18 using, as well as what you have used in the hearing to
19 support your argument.

20 So, with that, Union 64 and Union 65 is admitted.

21 **(Union's Exhibits 64 and 65, received into evidence.)**

22 MS. LaROSE: Thank you, Your Honor.

23 Your Honor, rather than keeping a Company witness
24 on the stand for an extensive period of time, I was
25 hoping to introduce the subsets here at the onset of the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 hearing, as well. I think I am actually going to defer
2 that until we get further into the hearing. I would ask
3 you Your Honor, though, to please take judicial of some
4 materials, as well.

5 The document that the Union has marked as Union
6 Exhibit No. 9, are the Voter Eligibility Lists from the
7 decertification election in 2017, as well as the
8 election in 2019.

9 **(Union's Exhibit 9, marked for identification.)**

10 JUDGE STECKLER: Okay, would anybody have any
11 objection to these documents as they reflect employees'
12 names and dates?

13 MR. NIEW: I'm sorry. This is Stan.

14 I did not hear, Your Honor.

15 JUDGE STECKLER: The Exhibit 9, Union Exhibit 9,
16 that Ms. LaRose proposes has voter names from 2017 and
17 2019. Is -- do you have any objection?

18 MR. NIEW: Yes, I have an objection as to
19 relevance.

20 The duties of the voters have changed and how the
21 Company operates could have changed, so those would have
22 no relevance to the current --

23 JUDGE STECKLER: Okay, Ms. LaRose, is it possible -
24 - although that may be a possibility what Mr. Niew
25 states, do you intend to cover that type of information

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 in your examination?

2 MS. LaROSE: Yes, Your Honor.

3 JUDGE STECKLER: Okay, in that case, Mr. Williams,
4 do you have objections?

5 MR. WILLIAMS: No, Your Honor.

6 JUDGE STECKLER: Okay, I am going to accept Union
7 Exhibit 9.

8 **(Union's Exhibit 9, received into evidence.)**

9 MS. LaROSE: And, Your Honor, Union Exhibit 11 is
10 the Employer's pre-hearing position with respect to the
11 unit, that is in an e-mail from Mr. Niew. I would ask
12 Your Honor to introduce that as well because it
13 characterizes what each employee allegedly did, and this
14 is right around the time of the election.

15 **(Union's Exhibit 11, marked for identification.)**

16 JUDGE STECKLER: So this is a 2019 document?

17 MS. LaROSE: Correct, Your Honor.

18 JUDGE STECKLER: Mr. Niew?

19 MR. NIEW: I have no objection.

20 JUDGE STECKLER: Mr. Williams?

21 MR. WILLIAMS: No objection, Your Honor.

22 JUDGE STECKLER: Union 11 is admitted.

23 **(Union's Exhibit 11, received into evidence.)**

24 MS. LaROSE: And then, Exhibit 44, Your Honor, is
25 just demonstrative to the exhibit. It is a Decision in

1 a case where there were similar allegations, although on
2 a smaller scale. It is a unit packing case. I am just
3 offering it for Your Honor's consideration as a -- as
4 authority.

5 **(Union's Exhibit 44, marked for identification.)**

6 JUDGE STECKLER: And you will discuss that further
7 in your brief, as well?

8 MS. LaROSE: I will, Your Honor.

9 MR. WILLIAMS: No, Your Honor, no objection from
10 General Counsel.

11 JUDGE STECKLER: Mr. Niew?

12 MR. NIEW: No objection from the Employer.

13 JUDGE STECKLER: Union 44 is admitted.

14 **(Union's Exhibit 44, received into evidence.)**

15 MS. LaROSE: And then, Your Honor, I don't know if
16 these are in the Formal Papers, I forgot to check --
17 well, it wouldn't have been. The Decision and Direction
18 of Election in the "RD" case, I would like to admit
19 that, as well, Your Honor, partly because one of the
20 people -- at least one or two people who voted here
21 performed truck driving type duties. Two -- at least
22 two are mechanics, and the Employer previously
23 unsuccessfully tried to get those individuals identified
24 in the unit, and that will be part of the arguments I am
25 making to Your Honor. So I would like that material in

1 there, as well.

2 JUDGE STECKLER: Yes, we can take administrative
3 notice of that.

4 What is the exhibit number, Ms. LaRose?

5 MS. LaROSE: Exhibit 44, Your Honor, and I am sorry
6 if I --

7 JUDGE STECKLER: Exhibit 44?

8 MS. LaROSE: I'm sorry, it is Union's Exhibit 52,
9 Your Honor.

10 **(Union's Exhibit 52, marked for identification.)**

11 JUDGE STECKLER: So I will take administration
12 notice of the "RD" Decision.

13 **(Union's Exhibit 52, received into evidence.)**

14 MS. LaROSE: And for similar reasons, Your Honor, I
15 would move for admission of Exhibit 53, which is the
16 Board's Decision in the "RD" case, which I believe was
17 affirming the Regional Director's determination in
18 regards to the unit.

19 **(Union's Exhibit 53, marked for identification.)**

20 JUDGE STECKLER: That was in 2017?

21 MS. LaROSE: Yes, Your Honor. I'm sorry, this is
22 dated 2018.

23 JUDGE STECKLER: All right, was it a published
24 Decision?

25 MS. LaROSE: I do not know that, Your Honor. I

1 actually have not checked that. I just retained this
2 copy in my files. I apologize. If you would like us to
3 confirm that, then I will do so before moving to admit
4 this.

5 JUDGE STECKLER: Yeah, that would be a good idea.

6 MS. LaROSE: Okay.

7 JUDGE STECKLER: Just to clarify for the record.

8 MS. LaROSE: Okay.

9 [Long pause]

10 MS. LaROSE: And then, Union Exhibit 58 is the
11 Employer's Statement of Position in the unit
12 determination case, Your Honor.

13 **(Union's Exhibit 58, marked for identification.)**

14 MR. NIEW: I'm sorry, Ms. LaRose, what was the
15 number?

16 MS. LaROSE: 58.

17 JUDGE STECKLER: Objections?

18 MR. NIEW: Again, we are talking about the "RD"
19 cases; is that correct?

20 JUDGE STECKLER: Is that correct, Ms. LaRose?

21 MS. LaROSE: Yes, Your Honor.

22 JUDGE STECKLER: Yes.

23 MR. NIEW: I have no objection to the current case.

24 JUDGE STECKLER: Mr. Williams?

25 MR. WILLIAMS: No objection.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Union's Exhibit 58 is admitted.

2 **(Union's Exhibit 58, received into evidence.)**

3 MS. LaROSE: And then, Your Honor, I would also
4 request, and this is my last one with respect to the
5 notice documents, Exhibit -- Union's Exhibit, Charging
6 Party's Exhibit 61, which is the dismissal and appeal of
7 the ULP filed against the Union, which overlaps with the
8 objections the Employer has presented in this case.

9 **(Union's Exhibit 61, marked for identification.)**

10 JUDGE STECKLER: Will the objections stand alone,
11 if the --

12 MS. LaROSE: That is certainly going to be the
13 Employer's argument, Your Honor.

14 Our position is going to be that Your Honor should
15 find the objections without merit for the same reason
16 that the Region determined that those -- that the ULP's
17 did not warrant complaint.

18 JUDGE STECKLER: Okay, is there anything
19 explanatory in there, or is it just a run of the mill
20 dismissal letter?

21 MS. LaROSE: There is some explanation in there,
22 Your Honor.

23 JUDGE STECKLER: Mr. Niew?

24 MR. NIEW: Frankly, I don't see the relevance, Your
25 Honor.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Well, technically, it is
2 administrative notice. We can put it in, but, Ms.
3 LaRose, you are going to have to tie up the loose ends
4 in your brief.

5 MS. LaROSE: Yes, Your Honor.

6 JUDGE STECKLER: So, Union's Exhibit 61 is
7 admitted.

8 **(Union's Exhibit 61, received into evidence.)**

9 JUDGE STECKLER: Mr. Niew, this also gives you an
10 opportunity to know ahead of time what to put in your
11 brief, as well.

12 MS. LaROSE: No additional items.

13 JUDGE STECKLER: That's it, Ms. LaRose?

14 MS. LaROSE: Yes, Your Honor.

15 JUDGE STECKLER: Okay. Based on what we have gone
16 through, does anybody else have any preliminary matters
17 to discuss?

18 MR. WILLIAMS: No, Your Honor.

19 MR. NIEW: No, Your Honor.

20 JUDGE STECKLER: Okay, in that case, we can proceed
21 with Opening Statements.

22 General Counsel?

23 MR. WILLIAMS: General Counsel waives Opening
24 Statements.

25 JUDGE STECKLER: I've never had that happen.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 All right, Ms. LaRose, do you have an Opening
2 Statement?

3 MS. LaROSE: I am going to waive Opening Statements
4 also, Your Honor.

5 JUDGE STECKLER: Mr. Niew, do you have an Opening
6 Statement?

7 MR. NIEW: I do, but I would like to present it at
8 the beginning of our case-in-chief.

9 JUDGE STECKLER: All right then.

10 In that case, Mr. Williams, you may call your first
11 witness.

12 MR. WILLIAMS: At this time, General Counsel would
13 like to call Joseph Needham to the stand, Your Honor.

14 MR. WRIGHT: Okay, Judge, and this may be more of
15 an issue for Ms. Spielberg to kind of finalize. I
16 mentioned it during one of our pre-conference meetings.

17 We have a laptop set up in one of the other
18 conference rooms for witnesses. Would it be acceptable
19 to have an invite sent to one of my law partners, my
20 wife here, to her e-mail, which she can log in on that
21 computer and then just have that be our witness stand
22 here? Is that an option?

23 JUDGE STECKLER: I think that is good.

24 Ms. Spielberg, are you okay with that?

25 MS. SPIELBERG: Yeah, that should work.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Okay, we can go off while we get
2 that taken care of.

3 [Off the record]

4 JUDGE STECKLER: Okay, Mr. Needham -- are we back
5 on the record?

6 THE COURT REPORTER: We are on the record.

7 JUDGE STECKLER: Okay, Mr. Needham, please raise
8 your right hand.

9 (Whereupon,

10 **JOSEPH NEEDHAM**

11 having been sworn/affirmed, was called as a witness herein,
12 and was examined and testified via video-conference, as
13 follows:)

14 JUDGE STECKLER: Please state your name and spell
15 it for the record.

16 THE WITNESS: Joseph Needham; J-o-s-e-p-h,
17 N-e-e-d-h-a-m.

18 JUDGE STECKLER: Thank you.

19 Mr. Williams, your witness.

20 MR. WILLIAMS: Okay, thank you.

21 DIRECT EXAMINATION

22 Q BY MR. WILLIAMS: Okay, Mr. Needham, by whom are
23 you currently employed?

24 A Needham Excavating.

25 Q Is that "Inc.," Incorporated?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 A Yes.
- 2 Q And how long have you been there?
- 3 A Full-time? I started the business in 1987.
- 4 Q Okay.
- 5 A It became full-time in 1992.
- 6 Q And what is your current position?
- 7 A Semi-retired, but I am still President, so
- 8 President, I would say.
- 9 Q Okay, how long have you been President?
- 10 A Since Day One.
- 11 Q Okay, and what are your duties as President?
- 12 A I just oversee the company.
- 13 Q *[Voice transmission garbled]*
- 14 A Say that again.
- 15 Q Do you oversee the day to day operations of Needham
- 16 Excavating, Inc.?
- 17 A Not the day to day. I just look at the overall
- 18 general picture of it. I don't have much to do with the
- 19 day to day operations.
- 20 Q Okay, are you a shareholder?
- 21 A Yes.
- 22 Q What percentage?
- 23 A 49.
- 24 MR. WILLIAMS: At this time, Your Honor, General
- 25 Counsel requests permission to question this witness

1 under 611(c) of the Federal Rules of Evidence.

2 JUDGE STECKLER: Granted.

3 MR. WILLIAMS: Thank you.

4 Q BY MR. WILLIAMS: Did you say the Company was
5 established in 1987?

6 A Yes.

7 Q And what is the nature of the business?

8 A Excavating.

9 Q Excavating, okay, and is that residential,
10 commercial, or both?

11 A Both, and industrial.

12 Q Okay. Percentage-wise, how much is residential,
13 commercial, and industrial?

14 A I don't know the exact figures off the top of my
15 head.

16 Q Okay. How many employees does Needham Excavating,
17 Inc. currently employ?

18 A I would say somewhere between 25 and 35. I am not
19 sure of the number.

20 Q And do you know their classification, job
21 classifications?

22 A Say that again, the first part of it.

23 Q Do you know what their job classifications are?

24 A At Needham Excavating we don't have job
25 classifications.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay.

2 A They are just employees. They all do work,
3 different work. They are all capable of doing whatever
4 it takes that day to get the job done.

5 Q Okay, but aren't there people that are classified
6 as Laborers, Operators, Drivers?

7 A *[No response]*

8 Q Do you understand the question?

9 A The day -- that is their day assignment.

10 Q Okay, but are --

11 A Not that they are classified as Drivers a hundred
12 percent of the time, they are not classified as a
13 Laborer a hundred percent of the time, and they are not
14 classified as an Operator a hundred percent of the time.

15 Our employees do what it takes that day to get the
16 job done. Sometimes they are carpenters, sometimes they
17 are electricians, and --

18 JUDGE STECKLER: Mr. Needham, are they paid
19 differently depending on what they do each day?

20 THE WITNESS: No.

21 JUDGE STECKLER: So how do you determine what to
22 pay people?

23 THE WITNESS: Our lead guys make more money, which
24 are basically our operators, they make more money, but
25 the operators do every job classification that we have

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 got -- that we have. We have got operators that have
2 CDL's; they labor, they drive truck, they drive lowboy.
3 They do everything.

4 Q BY MR. WILLIAMS: Okay, so what -- what do
5 operators do? What kind of duties do they perform?

6 A They run the equipment most of the time, and they
7 are in charge of the projects that they are working on.

8 Q Okay, so when you say "run the equipment," what
9 type of equipment are they running?

10 A Everything that we own; scrapers, backhoes, dump
11 trucks, everything that we own -- rollers.

12 Q Okay, so when they are working on the job, do they
13 work with the laborers, too; people who perform laborer
14 work?

15 A They work with people that perform labor work.
16 They do pipe setting and hand labor, yes.

17 Q Okay, so what all is involved as a laborer with
18 respect to pipe setting and pipe laying?

19 A They lay the pipe out, they do the ground work
20 basically. Their feet are on the ground doing the work
21 the days that they are laborers, and they are not always
22 laborers for a full day.

23 Q What are --

24 A They are -- our top guy, for example, for putting
25 in sanitary sewer, for a top guy, the one that hooks the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 pipe up, he will run a backhoe or a skid-loader or an
2 end-loader, or whatever, and attend the rock box,
3 putting material in the rock box. So their job
4 classification is just not clear-cut, or their job is
5 not clear-cut as a laborer or an operator.

6 Q Okay, so, for example, if there is a particular job
7 where there is an operator and a laborer, is it the
8 operator's job to dig a hole with a piece of heavy
9 equipment that he or she may operate?

10 A That is not their only job on that, no.

11 Q No, I didn't ask if that was their only job. I
12 said, is that "a job" that they do.

13 A Repeat what you said then exactly.

14 A I said, as far as what operators do on any
15 particular job, does that involve digging a hole or
16 digging a pit, whatever you want to call it, at that
17 jobsite, with a piece of heavy equipment?

18 A Yes.

19 Q Okay. And when a piece of pipe is involved, as
20 well, as far as trying to set that pipe, is there a
21 laborer involved with setting that pipe?

22 A Yes.

23 Q And what type of involvement does the laborer have
24 in setting that pipe?

25 A The laborer is the one in the hole. The pipe

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 setter is the one in the hole. There is a pipe setter
2 and a top guy.

3 There is a pipe setter in the hole that has got the
4 hole graded, and the top guy hooks the pipe up. The
5 operator picks it up and sets it in the hole.

6 Q Okay.

7 A And then the guy in the hole lines it up and they
8 push it together.

9 Q So, it is the pipe setter's job to align the pipe,
10 or to set the pipe up.

11 A Yes.

12 Q Okay. Now --

13 A Well, let me go back to there.

14 It is the pipe setter's job to set the pipe, that
15 piece, according to the laser that is set up by the lead
16 guy, yes.

17 Q Okay. Now, with respect to the driver, like a guy
18 driving a dump truck, what -- what all is involved with
19 that task?

20 A The truck driver can drive anything from the --
21 from a lowboy tractor to a dump truck to a semi-tractor
22 with the tub trailer on that. They load themselves,
23 like if we are hauling black dirt and they just need a
24 few loads of black dirt, they will load our black dirt
25 pile, and there will be a PC -- excuse me...

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 The truck driver gets out and loads himself and
2 drives the truck and then takes it to the jobsite, or
3 they are hauling out of a quarry where the quarry loads
4 them, to the jobsite, or they are hauling dirt on-site
5 where it is a big job, a bigger job, where we are
6 hauling out more than one or two loads of dirt, and then
7 there will be a guy in a machine that will load them.

8 [Long pause]

9 Q Now, are there any other tasks that -- that
10 employees at Needham Excavating perform out in the
11 field, other than driving trucks or operating heavy
12 equipment or setting pipe?

13 A Yeah. They do carpenter work, they pour concrete.
14 They will do electrical work if that is what we need.

15 0 And --

16 A They will do whatever it takes today to get the job
17 done.

18 Q And who is performing that carpentry work?

19 A All of the guys. It could be -- it could be
20 Brandon McKay, it could be Aaron Hamilton. It could be
21 Joe McAdoo. Yeah, it could be any of our guys
22 performing that work, and not just a set person or
23 anything.

24 Q Okay, and who also is pouring the concrete?

25 A Everybody on the crew pours concrete.

1 Q So, do you -- do you -- to the best of your
2 knowledge, do you recall how many employees Needham
3 Excavating employed between February 1st, 2019, and July
4 8, 2019? So, a little over two years ago.

5 A No, I don't remember total number.

6 Q Okay.

7 A I would -- I would think it is pretty close to that
8 25 to 35 range.

9 Q Okay.

10 A I don't know that for a fact though.

11 Q And did they have job classifications then?

12 A No.

13 Q Okay. So, who is the highest ranking person at
14 Needham Excavating, Inc.?

15 A I am.

16 Q And who is Nick Needham?

17 A He is the Office Manager. He runs the day to day
18 operations of the Company.

19 Q And how long has he been with the Company?

20 A Since he was -- forever. Since he was 16 or 15 or
21 14, or whenever he started helping.

22 Q So, you mean --

23 A Since 1987 basically.

24 Q Okay.

25 A 1987, 1988, or whenever he -- however old he was.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 He was nine years old and he was in a -- and we were
2 overhauling the dozer, and he ran the dozer in the
3 building for me and helped me put the tracks on, and he
4 was eight or nine years old at the time, so that is how
5 long he has been with us, or he went to college for a
6 couple years.

7 Q Okay. Well, how long has he held the job as a
8 manager or a supervisor?

9 A There is no real clear-cut date on that. It just
10 kind of I phased out and he phased in, and I -- I don't
11 know what year that would exactly have been. It has
12 been a slow process of me getting out and him getting in
13 and running it.

14 Q Okay, would that have started in the early 2000's,
15 or somewhere in there?

16 A No, that would have started, I would say, in 2010
17 to 2013.

18 Q Okay.

19 A Yeah.

20 Q Okay. And who is Curt McKinley?

21 A Curt is like a son to me. He -- him and my
22 youngest boy have been best friends forever. He has
23 been with the Company forever, other than a one-year
24 spat when he was sixteen or seventeen.

25 He is the -- right now, he runs the field

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 operations, the day to day stuff. He gets the material
2 lined up, gets the trucking lined up, and gets everybody
3 lined up with the projects they are going to.

4 Q Okay, so I need -- unfortunately for the record, I
5 need something more concrete than "forever."

6 So, can you give me a more definitive date with
7 respect to how long he has been with the Company?

8 A Curt started -- well, he was probably about
9 fourteen or fifteen when he started out.

10 Q Okay.

11 *[Talking over each other]*

12 A And he --

13 Q So --

14 A He was born in 1982, so 1996, 1997, other than one
15 year in there when he was sixteen or seventeen when he
16 didn't work for us.

17 Q Okay, and how long has he been with -- and how long
18 has he served as a supervisor or manager?

19 A When he went into the office -- he has been the
20 Project Manager and he has run his own work since the
21 early 2000's.

22 Q Okay.

23 A When he went into the office to start running other
24 jobs than the one he was on, was the fall of 2018, I
25 believe.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Now, does Needham Excavating, Inc. have any work
2 rules or regulations which have been in effect since
3 January 2017?

4 A Yes.

5 Q Okay, are they in writing?

6 A No.

7 Q Okay. Does Needham Excavating, Inc. have a
8 progressive discipline system -- system of discipline?

9 A Say that one more time.

10 Q Does Needham Excavating, Inc. have a progressive
11 system of discipline?

12 A No.

13 Q Okay. So who makes the decision to suspend an
14 employee?

15 A From what day to what day? Is that today or 2010
16 or 2013, or --

17 Q Okay, so let's go back. Let's say around 2019, the
18 year 2019. Who had the power to suspend employees?

19 A I have the last say on what happens. Joe Needham
20 has the last say.

21 I take advice from all of my employees, Nick, Curt,
22 and Daniel, and the rest of the guys, all of their
23 opinions come into account when it happens.

24 Q Okay, so -- so Nick and Curt have the ability or
25 have the authority to suspend, but you have the ultimate

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 decision regarding suspension.

2 A Today, I -- today, I don't. Back in 2018 and 2019,
3 I would say yes.

4 Q Okay.

5 A That is what I am saying is the progressive -- they
6 hire and fire guys without me knowing about it.

7 JUDGE STECKLER: Mr. Needham, one question.

8 Back in 2018 and 2019, when Nick Needham and Mr.
9 McKinley would give you recommendations on suspension,
10 did you usually follow those recommendations?

11 THE WITNESS: You're saying in '18 and '19?

12 JUDGE STECKLER: Yes, sir. If they explained to
13 you what they did, did you usually follow their
14 recommendations?

15 THE WITNESS: Yes, I would have at that time.

16 JUDGE STECKLER: You may proceed, General Counsel.

17 MR. WILLIAMS: Thank you, Your Honor.

18 Q BY MR. WILLIAMS: So, in 2019, would you have had
19 the ultimate responsibility to determine whether an
20 employee was to be disciplined?

21 A It depends on the situation.

22 Like I said, this has been a progressive -- me
23 leaving and the boys taking over. This is not January
24 1st, 2017, now they got all of the power and I don't
25 have any.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Well --

2 A It has been a steady progression from me having all
3 of the power to them having ninety percent of it.

4 Q Right, I understand that, but I am talking --

5 A Okay.

6 Q I am talking about the specific year, 2019, and I
7 am not talking about a progression, but in 2019, did you
8 have the ultimate responsibility to determine whether or
9 not an employee should be disciplined or not?

10 A At that particular time, it was a joint decision
11 between all of us.

12 Q When you say "all of us," who is "all of us?"

13 A Nick, Curt, Dan, and me.

14 Q Okay, so Nick Needham, Curt McKinley, and Dan
15 Needham?

16 A Yes.

17 Q And Dan Needham is who?

18 A Dan Needham is *[Voice transmission garbled]*

19 Q You broke up. I couldn't hear you.

20 A I didn't hear your question.

21 Q I said, who is Daniel Needham?

22 A He is my youngest son.

23 Q Okay, and what position does he hold within the
24 Company?

25 A Operator or Manager? He is still in the field and

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 still does all of our critical work.

2 Q All right, and how long has he been employed by the
3 Company?

4 A Since he was seven or eight years old, or ten years
5 old; same thing. It is the only place he has ever
6 worked.

7 Q So, back around 1997?

8 A Somewhere, yeah. Yes.

9 Q And how long has he been a supervisor or a manager?

10 A I -- like I said, it is one of the phase-in/phase-
11 out things that started back in the early teens.

12 Q Now, are you familiar with the International Union
13 of Operating Engineers Local 150?

14 A Yes.

15 Q And does the Union currently represent any of your
16 employees?

17 A Not to my knowledge.

18 Q Okay, at some point, did International Union of
19 Operating Engineers Local 150 ever represent your
20 employees?

21 A Yes.

22 Q Do you remember when?

23 A From -- I think it was -- well, hold it. You are
24 saying 150, correct?

25 Q Yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Local 150 represented the Building Trades Agreement
2 from 1992 until 2017, I believe.

3 Q Okay.

4 A And -- and I had a Heavy and Highway Agreement, a
5 6-County Agreement from -- I think it was January 1st,
6 2016 until the middle of 2017.

7 Q Okay. And who did they -- who did the
8 International Union of Operating Engineers, Local 150,
9 represent? Which portion of the employees did they
10 represent?

11 A The operators.

12 Q The heavy equipment operators?

13 A Yes.

14 Q Okay. Now, I believe you testified that they
15 represented the employees somewhere until 2016 or 2017?

16 A Until -- I believe the decertification election was
17 the middle of 2017.

18 Q Okay. Do you -- do you recall when it -- when the
19 decertification petition was filed initially? Do you
20 remember what year?

21 A I believe it was 2017.

22 Q Okay. And as a result of that decertification
23 petition, there was a decertification election; is that
24 correct?

25 A Correct.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And as a result of that decertification election,
2 the Union was decertified.

3 A Correct.

4 Q Okay. Now, were you ever made aware that the
5 International Union of Operating Engineers, Local 150,
6 was attempting to re-organize or organize again Needham
7 Excavating, Inc. employees?

8 A Say that one more time.

9 Q I said, did you ever become aware that the
10 International Union of Operating Engineers, Local 150,
11 was attempting to organize Needham Excavating, Inc.'s
12 employees again?

13 A Are you asking me when I knew a hundred percent or
14 if I --

15 Q I just wanted to know -- I am asking, when did you
16 -- if you became aware, when you became aware.

17 A They have always -- they have never left us alone.
18 They have always been trying -- working to try to
19 organize us again. There is not a real clear-cut date,
20 but the last major one that I knew, that I was a hundred
21 percent sure that they were, was when Adam VanOpDorp
22 walked into the meeting on April the 11th with a 150
23 shirt on, or sweatshirt, or whatever it was.

24 Q Okay.

25 A Then, I --

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q So when you say April the 11th, was that 2019?

2 A Yes.

3 Q And do you remember the shirt that he was wearing
4 at the time?

5 A No. I can tell you it was green. I don't remember
6 if it was a hooded sweatshirt that had 150 on it or a
7 T-shirt or what it was.

8 Q Okay. And who else was at this meeting?

9 A Nick Needham, Curt McKinley was there, but I don't
10 believe he was there for the whole time, Adam VanOpDorp,
11 Tracy Marshall, and Aaron Hamilton.

12 Q And who were those other individuals that you
13 named, the other employees? Who were they? I presume
14 they were employees.

15 A Yes, they are just two employees.

16 Q Okay. And do you recall what transpired during
17 that meeting?

18 A Yeah, I do.

19 Q What happened?

20 A There was complaints that we weren't providing what
21 was promised in -- after the decertification election in
22 2017.

23 Q Okay.

24 A Adam was complaining that we were not doing what we
25 were supposed to and not what we promised. We had a

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 conversation about that and the three guys that were in
2 there, Adam, Tracy, and Aaron, remembered things
3 different than I did, and I said, "I will correct the
4 issue with the insurance and we will take care of it."
5 I was not sure that was what we said, but them three
6 would not be lying to me.

7 So, I made my word good from 2017 until then.

8 Q Well, what did they think that they were promised?
9 What did they tell you that they thought that they were
10 promised?

11 A Equal insurance to what -- equal health insurance
12 to what Local 150 had.

13 Q For how long?

14 A That was our agreement, and my word is as good as
15 gold when I tell somebody that that is what you are
16 going to get, then that is what you are going to get,
17 and I was obviously mistaken because them three guys
18 corrected me, and I will tell anybody that they were not
19 lying to me. Them three guys would not lie to me about
20 that. So I trusted their word, and I was wrong.

21 Q So -- so what -- in the end, what did you tell them
22 that Needham Excavating was going to give them?

23 A I didn't tell them any different then than what I
24 told them in 2017.

25 Q That the Employer would continue to pay their --

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 the same premiums that they paid with the Union's health
2 insurance?

3 A No, we would provide --

4 MR. NIEW: Objection. *[Voice transmission garbled]*

5 JUDGE STECKLER: I'm sorry, Mr. Niew. We couldn't
6 hear your objection.

7 MR. NIEW: Objection to the word "premium." That
8 was not used in any context.

9 JUDGE STECKLER: Okay, Mr. -- Mr. Needham, can you
10 clarify that a little bit about what was said?

11 THE WITNESS: The -- no, it was not premiums that
12 we were discussing. It was coverage.

13 Q BY MR. WILLIAMS: Okay.

14 A Premiums have nothing to do with it, because on
15 whatever day it was, we brought in the four guys, them
16 three and Jake Madden *[Phonetic]* who had quit before,
17 the night before this meeting. We told them in whatever
18 year it was, 2017, what they were going to get for wages
19 and benefits, and they --

20 Q What were --

21 A -- and they --

22 Q What were they supposed to get?

23 A They were supposed to get equal to what Local 150
24 provides to their members, them four.

25 Q In health insurance.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yes, and --

2 Q In health insurance?

3 A Yes.

4 Q And so that was their concern when they had the
5 meeting with you, is that they weren't getting what they
6 thought they had been promised.

7 A Correct.

8 Q And so what -- what did you, or what did the
9 Company agree to give them?

10 A We agreed to give them what they -- evidently what
11 I had agreed to in 2017.

12 Q And --

13 A It was equal insurance to what --

14 Q Okay.

15 JUDGE STECKLER: Let me make sure I am
16 understanding this.

17 So the premium might have been different, but it
18 was equivalent health insurance. Is that correct, Mr.
19 Needham?

20 THE WITNESS: Yes. Needham Excavating pays a
21 hundred percent of their insurance costs, a -- a hundred
22 percent of their premiums.

23 JUDGE STECKLER: Okay.

24 THE WITNESS: Okay, yeah.

25 JUDGE STECKLER: Thank you.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: And --

2 JUDGE STECKLER: I will let Mr. Williams continue
3 now.

4 Okay, Mr. Needham?

5 THE WITNESS: Yes.

6 Q BY MR. WILLIAMS: Okay, so go ahead and say -- you
7 were talking about the coverage?

8 A Yeah.

9 Q What about the coverage? Go ahead.

10 A Yeah. We just promised them that, and they had an
11 issue, and the problem became -- Nick was taking care of
12 the insurance, but -- and our office gal, but anyway, in
13 2018 -- in 2017 and 2018, you could buy a "Platinum
14 plan" in the state of Iowa for the health insurance,
15 which was the top, and I don't know what the deductibles
16 were off the top of my head, and I believe it was in
17 2019, that was not available in the state of Iowa. All
18 of the insurance things going on, the "Platinum plan"
19 was not available.

20 So we bought them the best plan available at that
21 time, and that was my understanding or my recollection
22 of what we promised them afterwards.

23 But in that meeting, they assured me that that was
24 not what I promised them, and I believe them, and that
25 is why we corrected the problem.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And when did you start correcting the problem?

2 A Immediately.

3 Q Well, that -- that day, the next day?

4 A That -- whatever. I told them that, "If you guys
5 have co-pays or anything that should have been covered,
6 that you had out-of-pocket expenses for, that should
7 have been covered, get them to me and we will get you
8 guys brought up-to-date so that everything is right, so
9 that I honor my word to what I give you guys."

10 Q So, were these bills -- were -- so these bills that
11 you asked them to provide you, were they supposed to go
12 back to the time that the Union was de-certified,
13 sometime in 2017, or was there a cap? Was there a limit
14 put on that?

15 A No, no. If they could show me that they did not,
16 that they had out-of-pocket expenses that a Local 150
17 member would not have had, I would have paid them.

18 Q Okay.

19 A Because when I tell them I am going to do
20 something, I do it.

21 Q Okay.

22 A And again, all three of them agreed what we said,
23 and I will not call any of them a liar. Them three
24 would tell me the truth, so it was my mistake.

25 Q Okay, Mr. Needham, I am now going to show you what

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 has been marked as General Counsel's Exhibit 2, once I
2 share my screen.

3 **(General Counsel's Exhibit 2, marked for**
4 **identification.)**

5 Q BY MR. WILLIAMS: Okay, can you see that document,
6 sir?

7 A I can see it but I can't read it.

8 Q How about that?

9 A A little bigger if you could.

10 Q Is that better? Can you see it?

11 A No, if you can go bigger, that would be better.

12 Q Okay. How about that?

13 A Yeah.

14 Q Okay. Okay, do you recognize that document?

15 JUDGE STECKLER: Is that General Counsel's Exhibit
16 2, Mr. Williams?

17 MR. WILLIAMS: Yes, GC Exhibit 2.

18 JUDGE STECKLER: Thank you.

19 THE WITNESS: Yeah, it could be. Yeah. Yeah.

20 Q BY MR. WILLIAMS: And what is that document?

21 A It is a ULP by the way that I look at it.

22 Q Well, it is a "RC" petition, a representation
23 petition.

24 A Okay.

25 Q Have you seen this document before?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yes.

2 Q Do you remember when you saw this document?

3 A I would assume when they mailed it to me.

4 Q Okay, when Operating Engineers, Local 150, mailed
5 it to you?

6 A Somebody did. I can't say who it was, if it was
7 the NLRB or 150 or who.

8 Q Okay.

9 MR. WILLIAMS: At this time, Your Honor, General
10 Counsel will offer General Counsel's Exhibit 2 into
11 evidence.

12 JUDGE STECKLER: Any objections?

13 MR. NIEW: No objection.

14 JUDGE STECKLER: Ms. LaRose?

15 MS. LaROSE: No.

16 JUDGE STECKLER: General Counsel's Exhibit 2 is
17 admitted.

18 **(General Counsel's Exhibit 2, received into evidence.)**

19 MR. WILLIAMS: Thank you, Your Honor.

20 JUDGE STECKLER: Mr. Needham, the camera has been -
21 - we are only seeing --

22 THE WITNESS: Oh. I'm sorry.

23 JUDGE STECKLER: That's okay.

24 THE WITNESS: I moved it so I could read it.

25 Q BY MR. WILLIAMS: Now, to the best of your

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 knowledge, was there a hearing, what we call a Pre-
2 Election Hearing, held pursuant to that representation
3 petition that you just saw?

4 A Yes.

5 Q Do you remember when that was held?

6 A After I got that notice sometime in there. I don't
7 remember the dates, but it was -- what was the date on
8 that, 6-21-19?

9 Q Yes, 6-21-19.

10 A So it had to be after that date and before the
11 election. I don't remember the date.

12 Q Does July 2nd, 2019 ring a bell?

13 A No, but it could very well be. I don't know. I
14 don't.

15 Q And did you attend that pre-election hearing?

16 A That was the one in Peoria, correct? Is that what
17 they call that?

18 Q Yes.

19 A Yes.

20 Q Okay. And isn't it true that Adam VanOpDorp also
21 attended that pre-election hearing?

22 A Yes.

23 Q Okay. And isn't it true that Brett Gripp attended
24 that pre-election hearing, as well?

25 A Yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And who was -- and who was Brett Gripp?

2 A At that time, he was a former employee, and I have
3 known him for 20-plus years, I believe.

4 Q Okay, so he was employed by Needham Excavating,
5 correct?

6 A Yes.

7 Q And do you remember when he was employed by Needham
8 Excavating, Inc.?

9 A He was an employee. The majority of his job was
10 driving dump truck, but -- yeah, I mean, that was the
11 majority of his job. Like I said, I was not watching a
12 lot of the business by then every day, but I know he
13 drove truck.

14 Q Okay, do you remember how long he was employed --
15 do -- do you remember when he was employed by Needham
16 Excavating, Inc.?

17 A The fall of 2018 until June, I think, May or June
18 of 2019.

19 JUDGE STECKLER: Mr. Needham, when you say somebody
20 spent their -- like Mr. Gripp, Mr. Gripp drove a dump
21 truck the majority of the time, are there codes on
22 timecards or on the receipts --

23 THE WITNESS: Yes.

24 JUDGE STECKLER: -- that show what he was doing
25 that specific day?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: Yes.

2 JUDGE STECKLER: Okay, thank you.

3 THE WITNESS: Judge, if I can elaborate on that?

4 There was a sheet that was turned in that was
5 equipment numbers, and some of the evidence has
6 timecards in it.

7 JUDGE STECKLER: Okay.

8 THE WITNESS: If you look at the timecard on the
9 right, I believe it is on the right side, it will say
10 "Machine." I don't remember which one is what, but
11 let's just say "Machine No. 32" was a D7 Cat Dozer.
12 Number 81 was the F900 dump truck. Them are just
13 examples out of my head. I don't know if the number are
14 correct, but there is an equipment list number --

15 JUDGE STECKLER: Okay.

16 THE WITNESS: -- that we supplied.

17 JUDGE STECKLER: Okay, thank you for the
18 clarification.

19 Mr. Williams?

20 MR. WILLIAMS: Thank you.

21 Q BY MR. WILLIAMS: And what -- what were Brett
22 Gripp's duties as a dump truck driver?

23 A Same as all the rest of our guys. They do what
24 they got to do that day to get the job done.

25 Q Which is what exactly? I mean, if somebody drives

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 a dump truck, they are doing a specific task. So what
2 are they doing?

3 A Oh. They drive a dump truck. They could be
4 driving from the quarry, getting loaded at the quarry,
5 driving to a jobsite. They could be hauling dirt off
6 the jobsite where somebody at the jobsite is loading
7 them. They could be at the jobsite loading themselves.
8 They could be at the black dirt pile loading themselves.
9 They could be out of the truck with a broom and a
10 scraper cleaning the street up and helping.

11 Any task that Needham Excavating does, we expect
12 every employee to get out and help do it. There is not
13 a clear-cut classification at Needham Excavating what
14 they do.

15 Q All right. Now, isn't it true that Brett Gripp was
16 laid off around June 10th, 2019?

17 A Yes. I don't know about the date, but he was laid
18 off, yes.

19 Q And why was he laid off? What are all of the
20 reasons that he was laid off?

21 A Do you want me to start at the beginning when he
22 was hired?

23 Q Well, I want you to explain -- was there a
24 discussion with Brett Gripp about him being laid off?

25 A Not with me, no.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay. So, who did he have the discussion with?

2 A Here is the whole story, and Judge, I don't know --

3 I don't --

4 Q Hold on -- hold on

5 *[Talking over each other]*

6 A I don't know --

7 JUDGE STECKLER: Hold on a second.

8 Mr. Needham, I appreciate you trying to get this
9 all out, but Mr. Williams is going to try to kind of
10 direct you, and if there is anything left out, Mr. Niew
11 or Mr. Wright will pick it up on --

12 THE WITNESS: Okay.

13 JUDGE STECKLER: -- their examination, okay?

14 THE WITNESS: Yes. Yes.

15 JUDGE STECKLER: Okay, thank you.

16 Q BY MR. WILLIAMS: I just need to know specifically
17 all of the reasons that Mr. Brett Gripp was laid off on
18 June 10th, 2019.

19 A The main reason was, he has got a mouth on him that
20 don't quit. My wife worked with his wife in Labor and
21 Delivery for fifteen years, and that is one reason my
22 wife is not an R.N. anymore, because his wife, Jane, has
23 a mouth on her, just like Brett.

24 When the boys hired him, told them that that was a
25 very, very bad decision, and they hired him without me

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 knowing about it. But since how we have mutual friends,
2 I decided to let it play out and see what happened.

3 But his mouth on him never quits. He has always
4 got shit to say about something, and the decision to get
5 rid of him was made in April or May. When I was working
6 in the Weld Shop and Brett Gripp come back to the shop,
7 he was walking up to the Farm Service Building, which is
8 two blocks away from our Weld Shop, and he said, "Damn,
9 they over-paid me for a," he turned in a credit card
10 receipt for diesel fuel, and the office gal thought that
11 it was his personal credit card, so she reimbursed him.
12 She did not realize that somebody had given him a
13 company credit card to go get diesel fuel with.

14 So he turns the check back, and when he walked
15 through the Weld Shop, he told me the story, and he
16 goes, "Yeah, I don't want to steal any of your
17 trapshooting money," and them are the kind of remarks
18 why my wife does not work in OB anymore, and I have had
19 to put up with him for the last twenty years, every time
20 we go to a party with mutual friends.

21 JUDGE STECKLER: Okay, Mr. Needham, when you say
22 "that kind of remarks," what other kinds of remarks did
23 he make that you found offensive?

24 THE WITNESS: Well, he told one of the laborers --
25 he dated one of our Union laborer's wives. He asked the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Union laborer, "You got by the used parts yet?" That is
2 the kind of mouth he had on him.

3 JUDGE STECKLER: When --

4 THE WITNESS: And he --

5 JUDGE STECKLER: When did that remark happen?

6 THE WITNESS: I don't remember for sure, Judge.

7 JUDGE STECKLER: Was that early, late --

8 THE WITNESS: I don't remember, but them are the
9 kind of remarks that he made all of the time.

10 JUDGE STECKLER: Did -- did he -- did he also --
11 did you warn him about making this kind of remarks after
12 he was hired a number of times, but --

13 THE WITNESS: I never --

14 JUDGE STECKLER: -- did this just come on? You
15 never did, so --

16 THE WITNESS: I never did. One of the boys did. I
17 think Curt did, but one of them told me they talked to
18 him a quite a few times about it.

19 JUDGE STECKLER: Okay. Thank you.

20 Mr. Williams, you may continue.

21 MR. WILLIAMS: Thank you.

22 Q BY MR. WILLIAMS: So, for clarification purposes,
23 what -- so -- so you are saying that Mr. Brett Gripp
24 made comments that you didn't like over the course of
25 his employment, and are you -- and so what precipitated

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 -- what comments did he make that precipitated his June
2 10th layoff? Was it a combination of his --

3 A The straw that broke the back -- the straw that
4 broke the camel's back was when he told me that in the
5 Weld Shop.

6 I went in and told the boys, Nicholas Curt, and I
7 don't know if Daniel was there, but I said, "As soon as
8 we can get rid of him, get rid of him."

9 Q And when was that?

10 A That was April or May when he made the remark to me
11 in the Weld Shop.

12 Q Okay.

13 A Because my position is, and always will be, my wife
14 put up with Jane, his wife's mouth for fifteen years
15 because of their jealousy, and I was not going to put up
16 with his mouth. When he come running his mouth to me, I
17 will not put up with that.

18 Q And again -- and again, just for clarification
19 purposes, what was the comment that he made?

20 A "I didn't want to steal any of your trapshooting
21 money."

22 JUDGE STECKLER: Did you say trap or crap shooting?

23 THE WITNESS: Trap, t-r-a-p.

24 JUDGE STECKLER: Okay.

25 THE WITNESS: Trap.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: So trapshooting like skeet
2 shooting or --

3 THE WITNESS: Yes.

4 JUDGE STECKLER: Okay.

5 THE WITNESS: Yes, but trap is a different sport
6 than skeet.

7 JUDGE STECKLER: Okay.

8 THE WITNESS: Same principle, yes.

9 JUDGE STECKLER: Okay, thank you.

10 Q BY MR. WILLIAMS: Do you know why he would make
11 that comment?

12 A That is how Brett is.

13 Q Are you --

14 A That is why I told the boys when they hired him
15 that that was a mistake.

16 Q Okay, are you engaged in any trapshooting?

17 A Yes.

18 Q How often do you trapshoot?

19 A I shoot almost 20,000 targets a year.

20 Q Okay, and how does -- how would Brett know that?

21 A We have been -- we have got mutual friends for the
22 last twenty years, and we went to parties together, and
23 we were together at different times.

24 Q Okay.

25 A Yeah, mutual friends, because his wife -- his wife

1 and my wife worked together on a nursing floor for
2 fifteen years, or however long it was.

3 JUDGE STECKLER: So, Mr. Needham, let me make sure
4 I am understanding correctly.

5 Do you know about when he made the trapshooting
6 remark to you?

7 THE WITNESS: It was in April or May. I am not a
8 hundred percent sure on that.

9 JUDGE STECKLER: And what prevented you all from
10 getting rid of him sooner?

11 THE WITNESS: It was a very wet spring and we
12 needed every hand that we could get. It was wet. We
13 were having trouble keeping up with work. It was
14 raining. That is why we brought some extra help on that
15 spring, such as Tim Hamaan and Luke. We were just
16 swamped behind and, because of the weather, and we
17 needed help, so we couldn't get rid of anybody until we
18 got caught up.

19 JUDGE STECKLER: So you -- you put up with it until
20 you got to a point where you didn't think you needed him
21 anymore; is that --

22 THE WITNESS: Yes.

23 JUDGE STECKLER: -- my understanding?

24 THE WITNESS: Yes, Your Honor.

25 JUDGE STECKLER: Thank you.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Mr. Williams, you may continue.

2 MR. WILLIAMS: Thank you.

3 Q BY MR. WILLIAMS: And so, Mr. Needham, who made the
4 decision to lay Brett off?

5 A To make it a lay-off; is that --

6 Q Who made the decision to lay him off? He was laid
7 off, so who made the decision to lay him off?

8 A I laid him off. The decision was made in the Weld
9 Shop that day in my head when he was walking away.

10 Q Okay.

11 A And when --

12 Q And --

13 A And that is the reason he was gone.

14 The reason he got laid off instead of getting fired
15 was because of the mutual friends. We thought we would
16 try saving the peace between the mutual friends.

17 Q Okay, but, Mr. Needham, you made the final
18 decision, correct?

19 A Yes.

20 Q Now, to the best of your recollection, between
21 January 1st, 2017 and June 10th, 2019, has the -- has
22 Needham laid off any truck drivers?

23 A Between what days?

24 Q June 1st --

25 A It was --

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Between June 1st, 2017 and the date of Brett
2 Gripp's layoff? Has the Employer ever laid off any
3 truck drivers; dump truck drivers to be specific?

4 A Not to my recollection, but they are all part-time.

5 Q Okay..

6 A They are all -- most of our truck drivers in that
7 timeframe were not full-time truck drivers, with one
8 exception, and that was Clint McKinley who was the
9 lowboy driver in that timeframe.

10 Q And --

11 A Toward the end of the timeframe, he got to doing
12 more operating and running equipment and working in the
13 field, rather than truck driver.

14 Q Okay.

15 A Yeah.

16 Q Now, Adam VanOpDorp, who is Adam VanOpDorp?

17 A He was an employee of ours.

18 Q Okay. And what was his position?

19 A Employee/Operator mainly.

20 Q And what were his duties?

21 A What years?

22 Q The entire --

23 A The entire time he was employed at Needham?

24 Q Yes.

25 A Our business changed dramatically in 2015.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q In what way? How?

2 A Before 2015, and 2015 was more of a transition
3 year, it was not a clear-cut line in the sand that --
4 what I am going to say, it was not a clear cut, but it
5 was a transition.

6 Most of the work, and I would say ninety percent of
7 the work that Adam did before 2015, and Aaron Hamilton
8 did, and Daniel Needham did, was excavating and
9 backfilling for plumbers, which all they had to do, they
10 never had to watch grade. All they had to do is --
11 never had to put the pipe in, never had to do anything,
12 the layout or anything before 2015. There would be
13 times that I would go two or three weeks without seeing
14 Adam and Aaron. One of the remarks I always made to
15 them was, "Well, do you still work for me," because I
16 never seen them. They -- they did their own thing, and
17 that is what we did.

18 After 2015, or during 2015, we quit digging for
19 plumbers as much, and started being more of the general
20 contractor, putting the pipe in. We were not subs
21 anymore. We were the prime contractor. We were the
22 prime contractor putting pipe in the ground, which meant
23 that we were responsible, Needham Excavating and their
24 employees, the guys were given the job to run them, were
25 responsible for doing all of the layout, all of the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 material ordering, making sure that they had enough
2 after the original shipment got there, make sure the
3 grade was checked, make sure everything was done
4 properly on the job. So that is the line that switched
5 in 2015.

6 Q Now -- okay, so after 2015 what kind of duties did
7 he perform?

8 A Who?

9 Q Adam --

10 A Adam VanOpDorp?

11 Q Yes, specifically.

12 A Yah, he was digging pipe a lot of the time;
13 probably that was the majority after we got going in our
14 own pipe business. He was digging pipe and running pipe
15 crews out in -- let me rephrase that. He was digging
16 pipe when Jeremy Shoemaker was with us. Jeremy was --
17 which was a Union laborer, ran the pipe crews, ran the
18 pipe crews that Adam was on most of the time.

19 After Jeremiah Shoemaker left, Adam got put in
20 charge of jobs as they went. Adam was the boss, and he
21 was the one to make sure that everything was there, was
22 supposed to be doing the layout, supposed to be doing
23 the grade checking, and making sure everything was
24 installed properly.

25 Q And so when -- when did Jeremiah leave, Jeremiah

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Shoemaker?

2 A 2018 --

3 Q When --

4 A 2018, the summer.

5 Q Okay.

6 A I don't know the exact date, but -- and I am 99
7 percent sure that it was then.

8 Q Okay. Now, isn't it true that Adam VanOpDorp was
9 discharged on July 8th, 2019?

10 A Yes.

11 Q And why was he discharged? What are all of the
12 reasons that he was discharged?

13 A Lack of competence on running the work, and costing
14 us money in making huge mistakes that cost us money.

15 Q Okay, but what all --

16 A And lying on his timecard.

17 Q What specific jobs are you referring to?

18 A 18th Street was a big one in Moline. They put in
19 over 300 feet of pipe wrong, when they were only putting
20 in 20 foot a day, and before Adam started running work,
21 he ran the 11th Street job, I believe, the summer of
22 2018. That was the first job that he started on as
23 being the boss, the hundred percent, he is the guy in
24 charge. The 11th Street project, it was a two phase
25 project in 2018 and 2019.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Adam come into the shop. I was in the Weld Shop
2 again, working. Adam come into the shop and Curt and I
3 don't know who it was in the front office. Curt and
4 Nick give him drawings or 11th Street, because he was
5 going to run it. Adam come back to the Weld Shop and he
6 said, "Yeah, they are going to have me run 11th Street,"
7 and he had his chest out and was damned proud. I said,
8 "Boy, Adam, that is great," I said, "but just remember
9 that everything that happens on that job is your
10 responsibility. You have to check, double-check, and
11 triple-check everything. When you are the boss and you
12 have to spend an hour in the morning or at night,
13 whether it is on the jobsite or at home, you have got to
14 look through that stuff, look through the drawings and
15 make sure you know a hundred percent of what you are
16 going to do, and I will be more than happy to pay you
17 for that."

18 One of the comments I made to him was, "One of the
19 things that I was taught when I was an apprentice is you
20 never start a job until you know a hundred percent of
21 what you have got to do on that job so you don't miss
22 anything. The job has to be in your head before you
23 start a project."

24 And he did that project. During that project, I
25 got a phone call from Jason Faulcks that Adam is on the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 phone all of the time, they can't make any money. We
2 were not getting any foot. I confronted Adam about that
3 one, and let it go.

4 Adam did the 18th Street project. He did that --

5 Q What happened --

6 A Pardon?

7 Q What happened on the 18th Street project?

8 A They installed 300 foot of pipe with the wrong
9 grade on it, and we were running at minimal grade so
10 they could not, so the State -- or the City could not
11 let the mistake go, because it was below State standards
12 for grade. They had pipe going the wrong direction by
13 three and four inches in a 20-foot length, and standard
14 rule in the construction trade is every morning when you
15 set up, and Adam has been taught that, every time you
16 set up, every morning, you go back and check what you
17 did the day before, because it is so easy to add to
18 instead of subtract to, when you are checking grade out.

19 So when we --

20 Q Did --

21 JUDGE STECKLER: Mr. Needham -- I'm sorry, Mr.
22 Williams, let me interrupt just a second to clarify
23 something here.

24 On the 11th Street project, when did you receive
25 the complaints about Mr. VanOpDorp?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: On the phone, or which complaint?

2 JUDGE STECKLER: When did you receive the
3 complaints?

4 THE WITNESS: While he was in the middle of the
5 project.

6 JUDGE STECKLER: And when was that?

7 THE WITNESS: The summer of 2018.

8 JUDGE STECKLER: And what happened after you
9 received those complaints?

10 THE WITNESS: I just talked to him. I said, "Adam,
11 you have to stop it," and he keeps assuring -- kept
12 assuring us that he did, that he would.

13 JUDGE STECKLER: Okay, how many complaints did you
14 receive --

15 THE WITNESS: About that project?

16 JUDGE STECKLER: Yes, sir.

17 THE WITNESS: One, from Jason, is all I received,
18 but I was not running the project, and at that time, I
19 was not doing the day to day stuff in the office.

20 JUDGE STECKLER: Okay, was it brought to your
21 attention later?

22 THE WITNESS: The --

23 JUDGE STECKLER: Was it --

24 THE WITNESS: Judge, I don't know if I run into him
25 at the shop, or if he called me.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Okay.

2 THE WITNESS: Jason told me during that project
3 that Adam was on the phone all of the time.

4 JUDGE STECKLER: Okay, so -- so to your knowledge,
5 there were no other complaints made to other of the
6 managers at Needham?

7 THE WITNESS: I don't know that.

8 JUDGE STECKLER: Okay. And then, in the fall of
9 2018, when did you find out that the pipe was not in
10 correct?

11 THE WITNESS: When they had 300 foot of it in, and
12 the City went and shot the manhole they set, and they
13 were eight inches low. I would say it was probably
14 three weeks to a month after they started the sanitary
15 sewer.

16 JUDGE STECKLER: Approximately when was that --

17 THE WITNESS: The fall of --

18 JUDGE STECKLER: Of 2018?

19 THE WITNESS: October or November of 2018.

20 JUDGE STECKLER: And did you discuss that with Mr.
21 VanOpDorp?

22 THE WITNESS: I did not run that project. The boys
23 at that -- by that time, Judge, the boys were doing all
24 of the day to day stuff.

25 JUDGE STECKLER: Well, they may be boys to you, but

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 the --

2 THE WITNESS: I'm sorry, the men; Nick and Curt
3 were running --

4 JUDGE STECKLER: Okay.

5 THE WITNESS: -- the stuff.

6 JUDGE STECKLER: Okay, I just like --

7 THE WITNESS: Sorry.

8 JUDGE STECKLER: They are grown men, but --

9 THE WITNESS: Oh, I understand. Yes.

10 JUDGE STECKLER: Yes. Sorry to interrupt, Mr.
11 Williams. Please continue.

12 MR. WILLIAMS: Thank you.

13 Q BY MR. WILLIAMS: Okay, going back to the 18th
14 Street jobsite, who -- who did the crew consist of on
15 that project -- on that job?

16 A The only two guys that I knew that were there, that
17 I know for sure, because I did not run it. If you want
18 the truth, I was never on the job, but it was Adam
19 VanOpDorp and Jason Faulcks. I know some guys went in
20 and out there, and Dave Carter was there a few days, I
21 believe. I don't know who was there every day.

22 Q Okay, and was Adam disciplined for that job?

23 A He was talked to about it, I know, by Nick and
24 Curt.

25 Q Okay, but he didn't receive any discipline.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A What do you call discipline?

2 Q Any -- like a written warning or a suspension or,
3 you know, things like those?

4 A No, we do not do that at Needham Excavating.

5 Q Okay, what about the 11th Street job? Who -- who
6 was on the crew at that job?

7 A If you -- to give you an honest answer, I don't
8 know who the laborers were at that time. We had a
9 Laborers agreement with Local 309, and then we had
10 classifications. I do not know who the pipe setters
11 were on that job.

12 Q Okay. Was Adam disciplined for that job, for the
13 11th Street job?

14 A Yes, he was. On June 8th, or July 8th.

15 Q Okay, that was part of the termination.

16 A Yeah.

17 Q Okay, you made mention of a timecard. Can you
18 explain that?

19 A He turned in a timecard that did not match the
20 timecard of a fellow employee that was working on the
21 same job with him, and that fellow employee, Chad
22 Havill, told us that Adam left the jobsite at 3:00
23 o'clock, or 3:30, I'm sorry.

24 Q Okay.

25 A And Chad came to the shop or the office to pick up

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 material, grease or whatever he come to the shop for.

2 Maybe he needed fuel in his truck, I don't know.

3 Q Okay, so who was the employee that you are making
4 reference to?

5 A Chad Havill.

6 Q Okay. And who did he talk to about Adam's time on
7 the job?

8 A Well, when he was in the shop -- when he come into
9 the shop, he was standing in Curt's office door, and I
10 said, "Boy, you guys are done early today."

11 He goes, "Yeah, we got done and we got to a good
12 point to quit, and so I had to come out and get some
13 stuff."

14 I said, "Did Adam leave, too?"

15 "Yeah, Adam left at 3:30."

16 Q Were you present for that discussion?

17 A Yes, that discussion was with me.

18 Q What --

19 A With Chad.

20 Q What -- it wasn't with Curt?

21 A Curt -- we were standing in Curt's office door.

22 Q Okay, so it was you, Curt, and Chad Havill.

23 A Yes.

24 Q And so Chad said that Adam was on the jobsite from
25 when to when?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A He left the jobsite at 3:30. They start at 7:00
2 o'clock.

3 MR. WILLIAMS: I am going to share my screen.

4 THE WITNESS: And I am going to grab a jug of water
5 here.

6 [Long pause]

7 MR. WILLIAMS: This is General Counsel's Exhibit
8 No. 11.

9 **(General Counsel's Exhibit 11, marked for**
10 **identification.)**

11 Q BY MR. WILLIAMS: Mr. Needham, do you recognize
12 that document?

13 A It is a timecard from Adam for the weekend of 7-6.
14 That is the only thing I recognize, and I have seen it
15 because Monday, or whatever day we got here, that the
16 hours don't match.

17 Q Okay, so you remember the --

18 A Yeah.

19 Q So, looking at -- and I know it is kind of
20 sideways, but looking at the first line where it says
21 "Monday, July 1st," did you look all the way down to
22 overtime, where it says "OT?"

23 A Yep.

24 Q And you see the number "2?"

25 A Yes.

1 Q And it is circled?

2 A Yes.

3 Q And then there is an arrow pointing to it, and then
4 on the other side of the arrow, it says, "Wrong shift,"
5 I guess --

6 A Half hour.

7 Q -- half hour.

8 A Yeah.

9 Q Who wrote that? Whose notation is that?

10 A I do not know, but -- whose writing that is, but
11 looking at the writing, my guess would be Curt's.

12 Q Okay, thank you.

13 MR. WILLIAMS: At this time, Your Honor, General
14 Counsel moves for the -- offers General Counsel's
15 Exhibit 11 into evidence.

16 JUDGE STECKLER: Any objections?

17 MR. NIEW: No objection.

18 JUDGE STECKLER: I take it Mr. McKinley will also
19 be testifying as to this timecard, and he can verify
20 whether that is his handwriting, as well?

21 MR. WRIGHT: Yes, Judge, and for clarification,
22 that timecard is also one of Respondent's proposed
23 exhibits.

24 JUDGE STECKLER: Okay, that was -- that is General
25 Counsel's Exhibit 11; is that correct, Mr. Williams?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WILLIAMS: Yes, Your Honor.

2 JUDGE STECKLER: Ms. LaRose, any objection?

3 MS. LaROSE: No, Your Honor, but I would just ask,
4 Your Honor, for Mr. Wright to clarify of Respondent's
5 exhibits --

6 MR. WRIGHT: It is No. 1. It is part of No. 1, I
7 should say.

8 MS. LaROSE: Thank you.

9 JUDGE STECKLER: General Counsel's Exhibit 11 is
10 admitted.

11 **(General Counsel's Exhibit 11, received into evidence.)**

12 MR. WILLIAMS: Thank you, Your Honor.

13 Q BY MR. WILLIAMS: Okay, and who made the decision --
14 who made the decision to discharge Mr. VanOpDorp?

15 A That was a group decision between -- between all
16 four of us.

17 Q And all four being whom?

18 A Me, Nicholas Needham, Curt McKinley, and Daniel
19 Needham.

20 Q Okay. And that decision was made on July 8th,
21 2019, correct?

22 A Yes.

23 Q Okay.

24 A Well, I believe so. I don't know the date. I
25 don't have the dates in front of me, and I cannot swear

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 that it was July 8th.

2 Q Okay.

3 A No.

4 Q Okay, so prior to terminating Adam VanOpDorp, did
5 the -- did you or anyone at Needham conduct any kind of
6 investigation prior to the termination?

7 MR. NIEW: Any kind of investigation as to what?

8 MR. WRIGHT: I would also object as to speculation.

9 MS. LaROSE: Objection to -- a speaking objection,
10 Your Honor.

11 JUDGE STECKLER: You are objection to whose
12 objection, Ms. LaRose, I am asking.

13 MS. LaROSE: I am --

14 JUDGE STECKLER: You are objecting to the
15 Respondent's objection?

16 MS. LaROSE: Yes, I am.

17 JUDGE STECKLER: Okay. Let me clarify the question
18 for you, Mr. Needham. I am sorry to be jumping on
19 General Counsel so much, not him, but we were looking at
20 what happened up until that point.

21 Did you, or to your knowledge, did anyone else
22 discuss with Mr. VanOpDorp the timecard, or any issue
23 with it, before deciding to terminate him?

24 THE WITNESS: Say that again, Judge.

25 JUDGE STECKLER: Okay, before -- before you and the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 three other gentlemen decided to terminate Mr.
2 VanOpDorp, what, if any, type of investigation did you
3 conduct of the timecard?

4 THE WITNESS: The investigation was Chad told us
5 that he left at 3:30, or 4:00 o'clock -- 3:30, yeah.

6 JUDGE STECKLER: Did you talk to Mr. VanOpDorp
7 about it before you terminated him to understand what
8 had happened?

9 THE WITNESS: No, because on that same time period
10 there, we got -- we had to bust new concrete streets up
11 on 11th Street, and it cost us more money. He put a
12 piece of pipe in wrong in 2018 that we had to repair in
13 2019, and I believe the cost was a little under \$30,000,
14 and when them two things came together all at once, he
15 drove over the ADA mats, and he did a lot of damage in
16 2019.

17 JUDGE STECKLER: Okay, when did he drive over the
18 ADA mats?

19 THE WITNESS: It -- it is in an exhibit, Judge, on
20 the dates. It was May or June of '19, I believe.

21 JUDGE STECKLER: Okay, what does it mean to drive
22 over ADA mats?

23 THE WITNESS: They were laying on a piece of
24 concrete. He was putting black dirt down, and he drove
25 over them.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: What kind of damage did -- does
2 that cause?

3 THE WITNESS: I believe -- well, do you know what
4 the ADA mats are, ma'am?

5 JUDGE STECKLER: The only thing I am thinking of is
6 they are almost like -- in the concrete that you have
7 the divots.

8 THE WITNESS: Yes, that is it. That is them.

9 JUDGE STECKLER: Okay.

10 THE WITNESS: There was new ones laying on the
11 pavement in West Branch at Covey Park, and he drove over
12 them and wrecked them ADA mats.

13 JUDGE STECKLER: Okay. So, they are -- they're
14 like cut corners for a sidewalk; is that correct?

15 THE WITNESS: What was the first part?

16 Yeah, they were -- the ADA -- the ADA mats for
17 sidewalks that they pour in the concrete, yes.

18 JUDGE STECKLER: Okay, Mr. Williams, I'm sorry to
19 interrupt. You may continue.

20 MR. WILLIAMS: Thank you.

21 Q BY MR. WILLIAMS: Now, Mr. Needham, are you ever
22 involved in situations where employees file for
23 unemployment?

24 A Yes, somewhat, yes.

25 Q Okay, and so do you -- do you see documents

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 received by and made by Needham Excavating, regarding
2 unemployment claims?

3 A Not all of them, no.

4 Q Okay. Do you know who Casie Morehead is?

5 A Yes.

6 Q And who is she?

7 A She is our Office Manager. She takes care of
8 accounts payable, accounts receivable, payroll, and
9 helps with anything else we need in our office.

10 Q All right, and does she also handle unemployment
11 claims?

12 A No. She brings them to one of our attentions;
13 Nick, Daniel, Curt, or myself.

14 Q Okay, and --

15 *[Talking over each other]*

16 A Yeah.

17 Q But does she respond on behalf of Needham
18 Excavating, Inc. regarding unemployment claims filed by
19 former employees?

20 A I do not know if the boys, if Nick or Curt have
21 ever give her authority to do that. I don't know about
22 that, no.

23 Q Okay, I am going to show you -- I am going to share
24 my screen.

25 MR. WRIGHT: I would just object at this stage,

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Your Honor. Yeah, I would object.

2 This is what we talked about on I believe it was
3 part of our Zoom conference on our -- on one of our
4 Petitions to Revoke. These are unemployment records.

5 This particular one, it looks like it is Illinois.
6 The statutes are very clear on Section 1900. I would be
7 happy to submit a copy of it if you would like to review
8 it.

9 But it essentially provides and it prohibits
10 anything that was used, or information obtained from any
11 individual or employing unit, which would be here, NEI,
12 from being used in any court proceeding or pending
13 action, and it is also not admissible in evidence in any
14 action or proceeding, other than one arising under the
15 Unemployment Insurance Act.

16 JUDGE STECKLER: Okay, I did some research in the
17 meantime once you brought it up, and for some odd
18 reason, it just took away my cites.

19 There is a -- there is an EEO case, EEOC v. -- I'm
20 sorry I don't have the cite right off the top, a 7th
21 Circuit case, in which the EEOC was permitted to
22 subpoena that type of information and enter it into
23 evidence, because the Government, the Federal Government
24 has supremacy, and in NLRB cases, the NLRB case, and I
25 do not have the cite to that either, North Carolina

1 License Bureau, and I think it is No. 18, cites EEOC v.
2 *[Voice transmission garbled]* for the same results.

3 So, under the NLRB ruling, as well as the 7th
4 Circuit, these -- this information is not only
5 subpoenaable, it is also admissible.

6 So, your objection will be overruled.

7 Q BY MR. WILLIAMS: Mr. Needham, have you seen this
8 document, what we have marked as General Counsel's
9 Exhibit 12?

10 A No.

11 **(General Counsel's Exhibit 12, marked for**
12 **identification.)**

13 Q BY MR. WILLIAMS: Okay.

14 MR. WRIGHT: Your Honor, again --

15 THE WITNESS: It was going through the stuff for
16 this.

17 MR. WILLIAMS: So, Your Honor, it depends on how
18 you want to handle this. It is part of the subpoenaed
19 records. They are obligated to provide a custodian of
20 the records, so I would have them -- if we can't get it
21 in through him, then we would need to have them produce
22 a custodian of the records so that I can admit it into
23 evidence. I mean, it is -- just simple, we subpoenaed
24 the records, so --

25 JUDGE STECKLER: I understand, but we will have to

1 get a custodian of the records to get it.

2 MR. WILLIAMS: Okay. Okay. Thank you.

3 MR. NIEW: Your Honor, may I ask what the exhibit
4 number was? I can see --

5 MR. WILLIAMS: It is Exhibit -- General Counsel's
6 Exhibit 12.

7 MR. NIEW: Thank you.

8 MR. WILLIAMS: Okay, not to belabor the point, but
9 when would Respondent be able to produce a custodian of
10 the records for this particular document? Tomorrow?

11 MR. NIEW: Are you planning on calling Nicholas or
12 Nick Needham? He could testify as to that document.

13 MR. WILLIAMS: Okay, great. Thank you.

14 Q BY MR. WILLIAMS: Now, Mr. Needham, to the best of
15 your knowledge, has the -- has Needham Excavating, Inc.
16 discharged any employee between January 1st, 2017 and
17 July 8th, 2019, to the best of your recollection?

18 A Discharge them?

19 Q Yes.

20 A Yes.

21 Q Okay, do you know how many?

22 MR. NIEW: Objection; asked and answered.

23 JUDGE STECKLER: Pardon?

24 THE COURT REPORTER: I am really having trouble
25 hearing Mr. Niew.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Mr. Niew, are you close to a
2 microphone?

3 THE COURT REPORTER: It is sounding like Mr.
4 Williams is having trouble, too, in understanding him.

5 MR. NIEW: I am leaning over towards the
6 microphone.

7 JUDGE STECKLER: Okay --

8 MR. NIEW: Objection, Judge, asked and answered.

9 JUDGE STECKLER: He has already answered that.
10 You may continue, Mr. Williams.

11 Q BY MR. WILLIAMS: Okay, and how many employees have
12 been discharged in that timeframe?

13 A I have no idea. I don't -- I don't know a number
14 and I don't want to guess at it. I know there has been
15 some though.

16 Q Are you familiar with a Rodney Bailey?

17 A Yes.

18 Q And who was he?

19 A An employee.

20 Q Do you know what his -- what his duties were? What
21 his position was?

22 A An employee in Needham Excavating. Like I said
23 before, they do a little bit of everything.

24 Rodney worked in the shop, he was a truck driver.
25 He would do anything it took to stay busy to work.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay, was he discharged?

2 A I don't know what happened there. I can honestly
3 tell you that. I don't know. I don't know if he quit
4 or what happened. The boys -- Nick and Curt and Daniel
5 were part of that. I was no part of what happened to
6 Rodney Bailey.

7 Q Okay, what about Joseph Neill --

8 A I had no part in that.

9 Q Well, let me finish my question.

10 A Okay.

11 Q Was he employed by Needham Excavating?

12 A Yes.

13 Q And what was his position?

14 A Honestly, I do not know. I cannot tell you that
15 for sure.

16 Q Was he discharged?

17 A I don't know. I can honestly tell you that I don't
18 know. I was not involved in that. He was a short-term
19 employee, I know. He was not there very long. What
20 actually all happened there, I do not know. I cannot
21 swear to anything that happened.

22 *[Long pause]*

23 MR. WILLIAMS: Can I have one minute, Your Honor?

24 JUDGE STECKLER: Yes, we will go off the record for
25 a moment please.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 [Off the record]

2 JUDGE STECKLER: Okay, we are back on the record?

3 THE COURT REPORTER: Yes.

4 JUDGE STECKLER: Mr. Williams, you may continue.

5 MR. WILLIAMS: At this time, Your Honor, General
6 Counsel has no further questions for Mr. Needham, but
7 reserves the right to recall pursuant to a further
8 review of the subpoenaed records, and I believe Mr.
9 Wright and Mr. Niew are going to go back regarding the
10 compilation of the discipline that was issued and see if
11 they could find the underlying documents through --

12 JUDGE STECKLER: Okay, thank you, Mr. Williams.

13 In that case, Ms. LaRose, you may inquire if you
14 have questions.

15 MS. LaROSE: If I may, Your Honor, I don't believe
16 I received those tax returns that we requested.

17 JUDGE STECKLER: Okay, he would be subject to
18 recall when you get those, so if you could proceed with
19 what you have got --

20 MS. LaROSE: Sure.

21 JUDGE STECKLER: -- at this time.

22 MS. LaROSE: Okay, thank you.

23 DIRECT EXAMINATION

24 Q BY MS. LaROSE: Mr. Needham, I believe you told us
25 that your sons are Dan and Nick?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Correct.

2 Q And you said Curt McKinley was like a son, is that
3 right?

4 A Correct.

5 Q Curt -- Curt McKinley's sister, Carissa, was
6 married to Nick; is that right?

7 A Yes.

8 Q And Rick Needham is your brother?

9 A Yes.

10 Q I'm sorry, the Rick Needham who is employed by the
11 Company is your brother?

12 A Yes.

13 Q Okay, is it --

14 JUDGE STECKLER: Wait a minute...

15 Nick is your brother?

16 THE WITNESS: Rick.

17 JUDGE STECKLER: Rick, okay. I just wanted to make
18 sure.

19 I'm sorry, Ms. LaRose.

20 MS. LaROSE: Oh, that's all right, Your Honor.

21 Q BY MS. LaROSE: And his full name is Richard; is
22 that right?

23 A Yeah, it is Richard Dean Needham.

24 Q Thank you.

25 And am I -- if I am understanding correctly, your

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 niece has been intermittently employed by the Company,
2 right?

3 A Who is?

4 Q Your niece?

5 A Right, yeah, Zoe?

6 Q Okay, Zoe Ogden?

7 A Yes, my great niece.

8 Q Your great niece?

9 A Yeah.

10 Q And she drives a truck from time to time, is that
11 right?

12 A Correct.

13 Q And she has worked for the Company in the last, I
14 don't know, year or so, right?

15 A I believe so. I don't know the exact start date.

16 I --I -- a year or somewhere around there, yeah. I
17 don't know.

18 Q It could have been earlier?

19 A I don't know.

20 Q I'm sorry, it could have been earlier?

21 A Whenever the payroll records show, whatever the
22 hire date is, yes. I don't know, yes.

23 Q Okay, so in other words, what you are saying...

24 MS. LaROSE: And I apologize, Your Honor. This
25 witness and opposing Counsel and I have had a number of

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 hearings together, and we tend to get conversational. I
2 will try to avoid that so that we are not talking over
3 one another.

4 Q BY MS. LaROSE: In other words, when she started
5 working for the Company, Mr. Needham, that information
6 would be in the company's payroll records somewhere,
7 right?

8 A Yeah. They would be in NEI's records, yes.

9 Q Thank you.

10 Do you have any other blood relations who have
11 worked for the Company?

12 MR. NIEW: Objection, relevance.

13 JUDGE STECKLER: Ms. LaRose, can you explain?

14 MS. LaROSE: Sure. The hiring of intimates, Your
15 Honor, is what is relevant, to some of the allegations
16 in this way.

17 JUDGE STECKLER: And you mean in the challenged
18 ballots?

19 MS. LaROSE: Yes.

20 JUDGE STECKLER: Okay, the objection is overruled.
21 You may answer, Mr. Needham.

22 THE WITNESS: Okay, repeat the question.

23 Q BY MS. LaROSE: Sure. Do you have any other blood
24 relations who work at the Company?

25 A What timeframe are you talking?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 Q Ever?
- 2 A Oh, yeah. Yeah.
- 3 Q Okay.
- 4 A Dad worked for me, Richard L. Needham. John
- 5 Frances Needham worked for me, my brother. Oh, my
- 6 brother, not blood, but my brother-in-law worked for us.
- 7 Q What was his name?
- 8 A Eldon Hagen.
- 9 Q Okay.
- 10 A I don't think I am missing anybody.
- 11 Q Okay, no other -- let me make sure I got the family
- 12 tree right.
- 13 No other nieces or nephews, right, other than Zoe?
- 14 A Not that I recall. I don't -- I don't know if one
- 15 of them has ever helped out or not. I don't recall if
- 16 they did.
- 17 Q Okay, and no other -- neither children -- I'm
- 18 sorry, no other children of yours, aside from Dan and
- 19 Nick; is that right?
- 20 A Yeah, that is the only two I have.
- 21 Q Okay, and have any of their children worked at the
- 22 Company?
- 23 A No.
- 24 Q Okay.
- 25 A Well, let me back up.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay.

2 A They have been down to the shop and swept the shop
3 and helped clean up and do some office work, like normal
4 kids should do, yes.

5 Q Okay.

6 A They helped clean up, but then on a day to day
7 payroll, or a day to day employment, no.

8 Q Okay, so they have never been in a truck. They
9 have never run a piece of heavy equipment, none of that,
10 is that right?

11 A I didn't say that.

12 Q Let me clarify. They haven't done it in the
13 employee of the Company, right?

14 A Oh, correct.

15 Q Okay, right.

16 Do you have any other relations by marriage,
17 working at the Company?

18 A Not relation to me, no, that I know of that I can
19 think of.

20 Q Relations by marriage, Mr. Needham, so they won't
21 be blood relations. I just want to clarify my question.

22 A Not -- go ahead.

23 Q Okay.

24 A I have no relation by marriage that is relation to
25 me, no.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay.

2 A That I can think of, no.

3 Q Okay. So you haven't had -- I think you said your
4 wife's name was Julie. You have not had any of Julie's
5 relatives working at the Company?

6 A Oh, for Needham Excavating?

7 Q Yes.

8 A Oh, boy.

9 Mike and Pat Bebe, maybe, sometime back in history.

10 Q Mike is --

11 A Pat Bebe, and Larry Bebe might have helped out once
12 in a while.

13 Q So, you said Pat Bebe?

14 A Yep.

15 Q And who else?

16 A Mike Bebe. Those are my wife's two nephews.

17 Q Okay.

18 A And Larry is my wife's brother-in-law.

19 Q Okay, thank you.

20 And I just want to clear up some names that we have
21 heard from time to time in previous hearings, so if they
22 come up again, everything is clear.

23 Pickles is Ian Macumber, right?

24 A Correct.

25 Q Lefty is Adam VanOpDorp?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yes.

2 JUDGE STECKLER: Can you say that one again?

3 MS. LaROSE: Lefty.

4 JUDGE STECKLER: Is Mr. VanOpDorp.

5 MS. LaROSE: Correct.

6 Q BY MS. LaROSE: And Boo, B-o-o, is Dan Needham?

7 A Correct.

8 Q And this always confuses me -- Kenny McAdoo,

9 M-c-A-d-o-o, for the record, is also known as Kenny Joe,
10 right?

11 A Yes, I believe so.

12 Q And some people call him Joe.

13 A I believe so. I can't swear to that.

14 Q Okay. A question for you, Mr. Needham, now that we
15 have gotten that out of the way...

16 Now, about the Company's operations and its
17 revenue, with me asking these questions without the
18 benefit of, you know, having reviewed the tax returns.

19 Did the --

20 MR. WRIGHT: Judge, I am sorry. I don't know if
21 now is the appropriate time, but I was just able to get
22 them uploaded to SharePoint about ten -- right after Ms.
23 LaRose started her questioning. I understand if you
24 want to skip through that now and come back later, I
25 just wanted to let you know that they are up there now.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MS. LaROSE: Yes, I saw that. That is why I said I
2 didn't have a bunch reviewing them. I understand that
3 you have given them to me.

4 Thank you for that.

5 Q BY MS. LaROSE: Did the Company's work volume
6 increase or decrease between 2018 and 2019?

7 A Say that again.

8 Q Sure.

9 Did the Company's work volume increase or decrease
10 between 2018 and 2019?

11 A I could not tell you.

12 MR. NIEW: Objection to the form.

13 JUDGE STECKLER: I think he has answered the
14 question, Mr. Niew.

15 Mr. Needham, sometimes when there is an objection
16 out there --

17 THE WITNESS: I didn't hear that.

18 JUDGE STECKLER: -- and there is a little bit of a
19 lag also, so once in a while we are going to have you
20 talking over -- and in this situation you didn't know,
21 so that didn't really matter, so kind of take a deep
22 breath before you answer, okay?

23 THE WITNESS: Okay.

24 JUDGE STECKLER: That way there is an opportunity
25 for someone to object.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Ms. LaRose, you may continue.

2 MS. LaROSE: Sure, and I just want to make sure
3 this witness' answer was clear for the reasons you just
4 cited, Your Honor.

5 Q BY MS. LaROSE: I think your answer, Mr. Needham,
6 was that you didn't know; is that right?

7 A Yes, I could not tell you a hundred percent sure.

8 Q Okay. Well, I am not looking for -- let me strike
9 that.

10 Did the Company's work volume increase or decrease
11 between 2019 and 2020?

12 A I could not answer that a hundred percent either.

13 Q Okay. When you say you can't answer something a
14 hundred percent, I don't know if I know what that means.
15 Can you explain that to us?

16 A I honestly do not know. I do not know with a
17 hundred percent certainty what happened.

18 Like I said, I am phasing out of the business and
19 the boys are phasing in. So there is a lot of things if
20 I don't look at it, I can't worry about it, so I just
21 don't worry about it.

22 Q Okay. So, the -- the answer is you are basically
23 uncertain; is that right?

24 A Correct.

25 Q Okay. You are familiar with a company called K & K

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Repair and Contracting, right?

2 A Correct.

3 Q Okay, and as the name suggests, K & K was a
4 mechanical repair shop, right?

5 A Yes.

6 Q Okay. And K & K repaired heavy equipment and
7 trucks; is that right?

8 A Yes, and other things.

9 Q Okay, and K & K repaired Needham's heavy equipment,
10 correct?

11 A Yes, a good portion of it, yes.

12 Q And K & K also repaired heavy equipment or trucks
13 from other entities, correct?

14 A They did at the beginning, and towards the end they
15 were not able to keep up. It just got to be less and
16 less.

17 Q Okay. But at some point in its history, K & K was
18 repairing non-Needham vehicles and heavy equipment, is
19 that right?

20 A Correct.

21 Q Okay, and outside the facility where the K & K shop
22 -- where the eight bays are -- well, actually I should
23 ask you first...

24 How many bays were there in the K & K shop?

25 A Doors, or if we squeezed everything in tight or --

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 how do you --

2 Q Well, let's do doors. That doesn't seem to move
3 too much. They open and close, but they are fixed, I
4 guess is what I want to say.

5 A Five.

6 Q Five?

7 A But in them five doors, we can probably fit, four,
8 five, six, seven -- we can probably fit ten pieces in at
9 a time.

10 Q Okay.

11 A It would be tough, but it would work if we had to.

12 Q Okay. And outside the facility where those bays
13 are located, there is still a sign that says "K & K," is
14 that right?

15 A I honestly can't tell you.

16 Q Okay.

17 A I walk by there many times, and I don't see it.

18 Q Okay, so your answer is that there could be such a
19 sign, right?

20 A Yes.

21 Q And K & K essentially employed two mechanics, a
22 shop supervisor, and shop helpers, right?

23 A They don't employ anybody right now.

24 Q I put it in the past tense, so I think you are
25 covered.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 I will repeat the question.

2 A Okay.

3 Q K & K employed two mechanics, the shop supervisor,
4 and shop helpers, right?

5 A That number varied, yes.

6 Q Okay. Well, during the years 2018 and 2019, there
7 were only two mechanics, right?

8 A I -- I cannot say that for sure.

9 Q Okay. Well, do you remember any other mechanics
10 working there, other than Jerrod or Bill?

11 A Yeah.

12 Q In 2018 or 2019?

13 A I don't know when Brink quit. Jerrod Brink, I
14 don't recall that date.

15 Q And Mr. Needham --

16 A I --

17 Q I'm sorry, go ahead.

18 A And I don't know when Rod left. I don't recall
19 that date, Bailey or Bayless, whatever his last name
20 was.

21 Q Okay. And --

22 A Yeah, I don't recall all of the dates.

23 Q There was one name that we didn't -- the last name
24 wasn't real clear. Brink was the guy's last name?

25 A Yeah, Jerrod Brink.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q B-r-i- --

2 A B-r-i-k-n (sic).

3 Q Okay, could that be B-r-i-n-k?

4 A Yes.

5 Q Okay, thank you.

6 And prior to 2016, K & K Repair was owned by
7 Carissa Needham?

8 A What was the date that you give me?

9 Q I said prior to 2016, K & K was owned by Carissa
10 Needham?

11 A You said '16, correct?

12 Q I did.

13 A She owned it through the middle of '16. That is
14 when I bought it.

15 Q Okay. And at that time when you bought it, you and
16 your wife became the sole shareholders; is that right?

17 A Yes.

18 Q Okay. Do you recall that at some time in 2015
19 Needham answered a series of questions about Needham,
20 and its relationship to K & K, right?

21 A I don't remember, no.

22 Q Okay. Okay., I am going to put up on the screen
23 for Counsel the Judge's benefit, Union Exhibit No. 18.
24 **(Union's Exhibit 18, marked for identification.)**

25 *[Long pause]*

1 Q BY MS. LaROSE: I am just working to get this
2 shared -- hoping to get this on the shared screen.

3 Okay. Mr. Needham, we have just put up on the
4 screen a series of questions and answers that we --

5 A Okay.

6 Q That I was referencing.

7 A Yeah.

8 Q Can you please take a quick look at that document?

9 MS. LaROSE: Jim, if you wouldn't mind just
10 scrolling through it, because I think he will recognize
11 it.

12 THE WITNESS: Yeah, I recognize it, now that you
13 put it up there, yes.

14 MS. LaROSE: Okay.

15 MR. NIEW: Your Honor, I object as to relevance.
16 One, what does that document from 2015 have to do with
17 an election that took place in 2019? The information
18 could have changed, and most probably did.

19 MS. LaROSE: Your Honor, I am going to continue to
20 object to Mr. Niew's speaking objections, because
21 historically this is a mechanism, and I hate to say it,
22 but this has happened so many times. It is a way of
23 signaling to the witness how he should answer, and I --
24 you have now seen it two or three times here, and I
25 would just request that Mr. Niew restrict his objections

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 to the standard bases, instead of his explanation.

2 JUDGE STECKLER: And it will go to the weight -- if
3 it continues, it will go to the weight of the testimony
4 and credibility of the witness.

5 Ms. LaRose, you may continue.

6 MS. LaROSE: Thank you, Your Honor.

7 JUDGE STECKLER: Can you -- for Mr. Niew's benefit,
8 can you explain the relevance, please?

9 MS. LaROSE: Yes. We are talking about the
10 relationship, some of the people who voted in this
11 election that is the subject of this hearing, came from,
12 and are, K & K employees, and nothing has changed about
13 that, Your Honor. And so I think it makes sense to give
14 you, the person who is having to make the determination
15 here, some background into what this facility is, and
16 what its relationship has been to Needham Excavating
17 historically.

18 JUDGE STECKLER: The objection is overruled. You
19 may continue.

20 MS. LaROSE: Thank you.

21 Q BY MS. LaROSE: And this document that we put up on
22 the screen, Union's Exhibit 18, Mr. Needham, that is the
23 Company's responses to the series of questions that the
24 Union posed to Needham Excavating about K & K and other
25 entities, right?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A I believe so, yes.

2 Q Well, if you need to look at it some more, you
3 certainly can.

4 A No, I remember it, but how it got proposed and all
5 of that, I don't know.

6 JUDGE STECKLER: Ms. LaRose, was this an
7 information request that the Union made?

8 MS. LaROSE: It was.

9 JUDGE STECKLER: Okay, thank you, just for my
10 clarification.

11 MS. LaROSE: Okay, I am going to move for the
12 admission of Union's Exhibit 18, Your Honor.

13 MR. NIEW: Objection to the --

14 JUDGE STECKLER: I have overruled that objection,
15 and it will be -- Mr. Williams, any objection?

16 MR. WILLIAMS: No objection.

17 JUDGE STECKLER: Union's Exhibit 18 is received.

18 **(Union's Exhibit 18, received into evidence.)**

19 MS. LaROSE: Thank you, Your Honor.

20 Q BY MS. LaROSE: All right, I am going to put
21 another document on the screen. This one is a little
22 shorter.

23 This is Union's Exhibit 19.

24 **(Union's Exhibit 19, marked for identification.)**

25 Q BY MS. LaROSE: Okay, Mr. Needham, can you take a

1 look at this letter, and tell me if you recognize it and
2 remember authoring it?

3 A I remember -- I mean, it is definitely my letter,
4 unless somebody has forged something. What it all says,
5 I don't know.

6 Q Okay, why don't you take a second and just make
7 sure that we haven't engaged in any monkey business on
8 the side.

9 A Okay.

10 [Long pause]

11 A Yeah, okay.

12 JUDGE STECKLER: So you do recognize it, Mr.
13 Needham?

14 THE WITNESS: Say that again.

15 JUDGE STECKLER: So you do recognize it as a letter
16 that --

17 THE WITNESS: Yes.

18 JUDGE STECKLER: Thank you.

19 Ms. LaRose.

20 Q BY MS. LaROSE: Okay. And in this letter, Mr.
21 Needham, that I preceded the questionnaire, or it may
22 have been the cover letter for it, and I am honestly not
23 sure as we sit here, but in this letter, you denied that
24 there was any relationship between Needham Excavating
25 and K & K, right?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A I denied there was any financial relationship
2 between Needham Excavating and K & K.

3 Q Where does it say "financial relationship?" Maybe
4 I am just missing it.

5 A There -- the relationship between the two was --
6 they did our work plus other work.

7 Q Mr. Needham, I didn't ask you that. I said where
8 does it say "financial relationship?"

9 A Well, it doesn't that I see.

10 Q Okay.

11 JUDGE STECKLER: I think the document speaks for
12 itself, Ms. LaRose.

13 MS. LaROSE: You are right, Your Honor.

14 Q BY MS. LaROSE: And then -- and then it also says
15 that there is no entity known as Red's Crushing; is that
16 right?

17 A Correct.

18 Q Okay, and everything you put in that letter was
19 truthful at the time, right?

20 A Correct.

21 Q Okay. And, yet, if I were to look at -- I mean,
22 everything in that letter is truthful, including the
23 repeat representations between this letter and the
24 questionnaire, that there was no entity such as Red's
25 Crushing, right?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Is that a question to me?

2 Q Yes.

3 A Yes, there is no entity such as Red's Crushing,
4 that I know of, that I am responsible for.

5 Q Okay. And so -- and yet you registered for a
6 permit under that name with the Iowa Department of
7 Natural Resources, haven't you?

8 A We registered -- oh, that was the storm permit, and
9 that -- the location we called it -- we called the
10 location Red's Crushing, like we call our old shop, the
11 Old Shop. We call the farm service building, the Farm
12 Service Building, that we own now, and that was the name
13 of that project or that location, yes.

14 Q And that permit was initially certified by you and
15 requested by you in 2013, wasn't it?

16 A I don't know that for a fact.

17 MS. LaROSE: Can you please put Union's Exhibit 71
18 on the screen?

19 JUDGE STECKLER: Ms. LaRose, are you moving Union's
20 Exhibit 19 before we move on?

21 MS. LaROSE: Yes, Your Honor, I am. Thank you.

22 JUDGE STECKLER: Objections?

23 MR. WILLIAMS: No objections, Your Honor.

24 JUDGE STECKLER: Union's Exhibit 19 is admitted.

25 **(Union's Exhibit 19, received into evidence.)**

1 MS. LaROSE: Thank you.

2 MS. SPIELBERG: I'm sorry, Ms. LaRose, is that a
3 request for me?

4 MS. LaROSE: It was not.

5 MS. SPIELBERG: Okay.

6 [Long pause]

7 JUDGE STECKLER: What exhibit coming up, the
8 exhibit number?

9 MS. LaROSE: It is Union's Exhibit 71, Your Honor.

10 JUDGE STECKLER: Thank you.

11 THE WITNESS: Appreciate it if you could make it
12 bigger, if you could.

13 MS. LaROSE: Sure.

14 THE WITNESS: Keep going.

15 MS. LaROSE: Can he see the whole screen? Widen
16 it?

17 JUDGE STECKLER: Or slide it over.

18 MS. LaROSE: Jim?

19 THE WITNESS: There you go.

20 **(Union's Exhibit 71, marked for identification.)**

21 Q BY MS. LaROSE: Okay, so Mr. Needham, you see at
22 the top there, underneath where it says Iowa Storm
23 Permits, and there is a menu there, it says "Facility
24 Name - Red's Crushing."

25 A Yeah, that's the name of the facility.

1 Q And --

2 A It is not the name of a business, it is not the
3 name of anything. It is -- like I said before, it is
4 like Red's -- it is like Farm Service Building.

5 Q Mr. Needham -- Mr. Needham, I am just trying to
6 keep you -- if you want to give us an explanation, and I
7 think it is with the Judge's permission, I think it is
8 going to have to come in through your counsel, or
9 otherwise we are going to be here a long time.

10 MS. LaROSE: Can we scroll down to the second page,
11 please, and then widen a little bit. Go all the way to
12 -- there we go. Scroll up a little bit. Scroll up.

13 Okay, perfect.

14 Q Okay, and you will see on there, Mr. Needham, that
15 it says "Certified Date - February 11th, 2013." Now, I
16 circled that obviously, on the Department's website. I
17 circled it so that we all could find it.

18 So, there has been something registered as "Red's
19 Crushing" since 2013, right?

20 A What do you mean by something?

21 Q Well, okay. I understand the fine distinctions you
22 are trying to block. I don't happen to agree with them,
23 but let's just roll with that.

24 There has been a location that applied for a permit
25 under the name "Red's Crushing" in 2013. Have I got

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 that right?

2 A It is the name of the facility, yes.

3 Q Mr. Needham, please answer my question.

4 JUDGE STECKLER: Let me ask, Mr. Needham, if you
5 come down to the boxes underneath the Facility Name,
6 Permit Type, Expiration Date, and County, and then it
7 says "Joseph Needham," address, Walcott, Iowa, and then
8 it says "Owner."

9 I don't understand what that registration means.
10 Could you explain that for me?

11 THE WITNESS: What that...

12 I honestly don't know what that means, and I would
13 have to go back through the records and see who owned
14 what at the time.

15 JUDGE STECKLER: Ms. LaRose, you may continue.

16 MS. LaROSE: Thank you.

17 Q BY MS. LaROSE: Okay, you are not disputing, Mr.
18 Needham, that you caused a permit to be put in the name
19 of "Red's Crushing" in 2013, are you?

20 A No.

21 MR. NIEW: Asked and answered.

22 JUDGE STECKLER: He had already answered it, Mr.
23 Niew. I'm sorry.

24 MS. LaROSE: Okay, I am going to move for the
25 admission of Union's Exhibit 71, Your Honor.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Any objections?

2 MR. WILLIAMS: No objection from the General
3 Counsel, Your Honor.

4 MR. NIEW: Objection as to any relevance and the
5 dates of the -- and the timing of it.

6 JUDGE STECKLER: Ms. LaRose, are you going to
7 connect the dots later?

8 MS. LaROSE: Sure, Your Honor. I mean, I think the
9 relevance of it is that, you know, Mr. Needham is not
10 always candid about the relationship between one company
11 and another and the nomenclature that is used, and so on
12 and so forth, and so I would move to admit it for that
13 purpose.

14 JUDGE STECKLER: Okay, so that's --

15 MR. NIEW: Your Honor, another objection. Improper
16 in that she did not go through the entire document.

17 JUDGE STECKLER: Well, we can do that, Ms. LaRose.
18 Do you want to go back up to the top, or through the
19 rest of the document?

20 MS. LaROSE: Sure, Your Honor.

21 JUDGE STECKLER: Thank you.

22 Q BY MS. LaROSE: All right, so let's go through the
23 first page of this document, and we have already
24 established that a permit was applied for with respect
25 to Red's Crushing, so we have covered the location and

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 the facility, and it looks like, based on the history --

2 MS. LaROSE: Jim, could you get the table in view?

3 Just for a while.

4 Q BY MS. LaROSE: It looks like that in -- on

5 February 11th, 2013, at the bottom of the first page,

6 Mr. Needham, that this company was granted authorization

7 to perform some kind of recycling work at this location;

8 is that correct?

9 A What was the question? I thought you were just
10 going through the document.

11 JUDGE STECKLER: This is just for confirmation, Mr.
12 Needham, so if you will let her know.

13 THE WITNESS: Re-ask the question. I was just
14 listening to what she was saying on there. I didn't
15 take it as a question.

16 I'm sorry.

17 MS. LaROSE: No problem. No problem.

18 Q BY MS. LaROSE: If you go -- so it looks like the
19 history here of this permit goes from oldest at the
20 bottom to newest at the top. Are you seeing that also?

21 A Yes.

22 Q Okay, and so the first starting point is that this
23 facility was granted authorization to operate starting
24 in -- on February 11th, 2013, right?

25 A Correct.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And it must have been some kind of provisional
2 authorization because, you know, maybe it was received
3 the next day, and the next entry is final approval,
4 which sounds like the Department put its blessing on
5 this, almost the same day that the provisional
6 authorization was given. Does that sound right to you?

7 A Yes.

8 Q Okay. There is apparently a fee for this permit,
9 and about two lines it up, it indicates that that fee
10 was received, and that it was for five years for the
11 permit. Does that sound right to you also?

12 A I don't -- oh, okay, yeah. I see where you are at,
13 yes. That sounds right.

14 Q Okay. And...

15 MS. LaROSE: I am not going to go through every
16 line, Your Honor.

17 It looks like in -- and I can't read this small.

18 Thank you, Jim.

19 Q BY MS. LaROSE: There were five years on the
20 permit, and it looks like in February of 2018 -- I am
21 about four lines down from the top, Mr. Needham -- you
22 had to renew it, right?

23 A Yes.

24 Q And so, as a consequence of that, you folks sent in
25 a renewal, and it looks like the Department acknowledge

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 that it was received timely, you know, February 9th of
2 2018; is that right?

3 MR. NIEW: Objection to form.

4 JUDGE STECKLER: Ms. LaRose, are you working the
5 premise of 611(c)?

6 MS. LaROSE: I am.

7 JUDGE STECKLER: The question is acceptable.
8 You may answer, Mr. Needham.

9 THE WITNESS: Oh, what was the question again? I -
10 -

11 MS. LaROSE: Okay.

12 THE WITNESS: Well...

13 MS. LaROSE: No, that's all right. I am laughing
14 only because -- never mind. It is not material.

15 Q BY MS. LaROSE: Four lines down, Mr. Needham, where
16 I am at right now, from the top, the entry from February
17 9th, 2018. Are you looking at that also?

18 A Yep. The fee, the "Fee received?"

19 Q Yes.

20 A Yes.

21 Q It looks like the permit was renewed on February
22 9th of 2019; is that right?

23 A Yes.

24 Q I'm sorry, 2018.

25 A 2018, yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And then, a renewal reminder, and I am going up to
2 the top line, was sent December 12th of 2018; is that
3 right?

4 A Yes.

5 Q Okay.

6 MS. LaROSE: Let's scroll down to the second page.

7 Thank you.

8 Q BY MS. LaROSE: And then the top part of the second
9 page, Mr. Needham, shows -- it shows different. What I
10 am understanding from this is that it shows you in
11 different classes as it relates to this facility.

12 On the first line it reflects that you are the
13 owner, and that information is correct, right?

14 JUDGE STECKLER: That was correct in 2013 when you
15 applied?

16 THE WITNESS: I don't know if we misread that. I
17 think the owner -- yes, it must have been correct at the
18 time, yes.

19 Q BY MS. LaROSE: And that you were also listed as
20 the contact when this permit was applied for initially,
21 correct?

22 A Yes.

23 Q And you were also the, quote/unquote, "Certifier"
24 as far as the Department was concerned at that time?

25 A What is the Certifier?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q That it means to be the role they are asking you to
2 occupy here.

3 A Say that one more time.

4 Q Sure. That was poorly worded.

5 The Department has you classified as the Certifier;
6 is that right?

7 A I don't know what the Certifier is, so I can't -- I
8 don't know if that is true or not.

9 Q Okay.

10 A Where is that on the document? Am I missing that,
11 or is --

12 Q I will show you.

13 A Oh, okay, right there. I see it.

14 Q And even down, if you go down below the big line
15 that separates it --

16 A Yeah.

17 Q -- you see that in the upper right-hand corner,
18 just before the line, it says "Certifier?"

19 A Yes.

20 Q So you would agree that you are on file with the
21 Department of Natural Resources as being the Certifier
22 for this facility, right?

23 A Yes.

24 Q Okay, and you have been the Certifier, or were the
25 Certifier, in 2013, correct?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Correct.

2 Q Okay, thank you.

3 MS. LaROSE: I am going to move --

4 JUDGE STECKLER: Let me ask a couple questions.

5 I'm sorry, Ms. LaRose.

6 MS. LaROSE: Of course.

7 JUDGE STECKLER: Where it says Company Name, JBN

8 Investments, that was a company that you were also owner
9 of at that time?

10 THE WITNESS: Yes.

11 JUDGE STECKLER: The e-mail address that is on
12 there, needhamex@needhamex.com. What does that mean?

13 Whose address was that?

14 THE WITNESS: It is mine, Joe Needham. That is my
15 e-mail address, and still is.

16 JUDGE STECKLER: All right, is that your personal
17 e-mail, or is that a company e-mail, or do you use that
18 for all of the companies?

19 THE WITNESS: I use that for everything; all of the
20 businesses and all of my personal stuff also.

21 JUDGE STECKLER: Thank you.

22 Ms. LaRose, you were about to move?

23 MS. LaROSE: Yes, Your Honor.

24 Move for admission of 71.

25 JUDGE STECKLER: Any objection.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. NIEW: Renew the objection that was overruled,
2 relevance.

3 MR. WILLIAMS: No objection from General Counsel.

4 JUDGE STECKLER: Okay, since Ms. LaRose is using it
5 to argue credibility, it will be admitted. It doesn't
6 mean it stands for that proposition, but it is something
7 for you to argue on the briefs.

8 **(Union's Exhibit 71, received into evidence.)**

9 MS. LaROSE: Thank you, Your Honor.

10 Q BY MS. LaROSE: Now, K & K is separately
11 incorporated from Needham Excavating, right?

12 A Say that again. I am having trouble hearing you.
13 You will have to talk to the mic.

14 Q Nobody has ever said that they have trouble hearing
15 me, Mr. Needham, so --

16 A I bet they don't wear these now do they?

17 Q No, no they don't.

18 A Okay.

19 Q I will get closer.

20 K & K is separately incorporated from Needham
21 Excavating, right?

22 A Yes.

23 MS. LaROSE: And, Your Honor, I can only get so
24 close before I go off camera --

25 THE WITNESS: No, that is fine. Just talk to the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 mic.

2 MS. LaROSE: Okay.

3 THE WITNESS: Yeah, don't talk down --

4 MS. LaROSE: Okay, I got you.

5 THE WITNESS: Yeah. Okay.

6 Q BY MS. LaROSE: And was the answer yes, to that?

7 A What was the question.

8 Q Okay, no problem.

9 K & K is separately incorporated from Needham
10 Excavating, right?

11 A Correct.

12 Q And it has been separately incorporated from
13 Needham since its inception, right?

14 A Correct.

15 Q When K & K actually filed a report in March of 2021
16 with the Secretary of State - Business Division, is that
17 right?

18 A Yes. My lawyer did that, yes.

19 Q Okay.

20 MS. LaROSE: Jim, can you bring up 17, please?

21 **(Union's Exhibit 17, marked for identification.)**

22 MS. LaROSE: Your Honor, I am just going to move
23 for admission of Union's Exhibit 17, which is the
24 Secretary of State record for K & K.

25 I can bring it up on the screen if you think that

1 would be helpful.

2 JUDGE STECKLER: Let's have Mr. Needham take a look
3 at it, please.

4 MS. LaROSE: Okay.

5 Q BY MS. LaROSE: Okay, Mr. Needham, does that look
6 right? In other words -- let me strike that.

7 This is a page from the Iowa Secretary of State's
8 website, and it is identifying the corporate
9 registration for K & K Repair and Contracting. Is that
10 consistent with your understanding of K & K's status?

11 A K & K is obviously open yet, or not open, but the
12 LLC still exists. Obviously we had a mistake in there
13 that the bookkeeper thought they were closing it, and
14 the lawyer thought the bookkeeper was --

15 MS. LaROSE: I move to strike, Your Honor.

16 JUDGE STECKLER: We will take that under
17 advisement. We will go ahead and look at the rest of
18 the document.

19 MS. LaROSE: Okay, let's scroll down to Page -- I
20 don't know if we actually have to -- there we go.

21 Q BY MS. LaROSE: This indicates that the second page
22 from the Secretary of State's website, again, indicates
23 that the Company was incorporated in 2011. Does that
24 comport with your memory, Mr. Needham?

25 MR. NIEW: Objection. I'm sorry?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: Am I supposed to answer that?

2 MS. LaROSE: Yes.

3 JUDGE STECKLER: Mr. Niew, what was your objection
4 again?

5 MR. NIEW: I just didn't hear that question. I
6 apologize.

7 JUDGE STECKLER: Okay. So, do you understand now,
8 Mr. Needham, before we continue, about the effective
9 date of starting K & K was 2011? Is that correct, Mr.
10 Needham, based on this document?

11 THE WITNESS: Yeah, based on the document, yes.
12 Yes.

13 JUDGE STECKLER: Okay, to your knowledge, was this
14 *[Voice transmission garbled]*

15 THE WITNESS: Say that part again.

16 JUDGE STECKLER: To your knowledge, did it exist
17 before it was registered with the Secretary of State in
18 2011?

19 THE WITNESS: It existed before then?

20 JUDGE STECKLER: Yes, sir.

21 THE WITNESS: Not that I know of, no.

22 JUDGE STECKLER: Okay. Thank you.

23 Ms. LaRose.

24 MS. LaROSE: Thank you.

25 Now, could you please scroll down to the next page,

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Jim?

2 MS. LaROSE: Okay. Thank you.

3 Q BY MS. LaROSE: Okay, as you can see at the bottom
4 of this page, it indicates that on March 16, 2021, the
5 Company filed its biennial report. Do you see that
6 information?

7 A Yes.

8 Q And I think your testimony indicated that was your
9 understanding also, right?

10 A What was my understanding?

11 Q That the Company filed a report with the Secretary
12 of State with you?

13 A My lawyer obviously did it, yes.

14 Q On behalf of the Company.

15 A Yes.

16 Q Thank you.

17 MS. LaROSE: Okay, and then, Your Honor, I am going
18 to scroll down a couple more pages here. We don't need
19 to rely on this. I think it is --

20 JUDGE STECKLER: Is it a part of Exhibit 17?

21 MS. LaROSE: It is, Your Honor, so I am just going
22 to...

23 I'm sorry, Your Honor. We are just finding our
24 place in the document.

25 Q BY MS. LaROSE: Mr. Needham, this document, this

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 page and the one that follows, are I believe what is on
2 file with the Secretary of State as far as the Articles
3 of Incorporation for K & K, and if you scroll down to
4 the last page, I think Carissa Needham, Nick's wife at
5 the time, signed as the "Organizer" of the Company.

6 Does that document look familiar to you?

7 A I cannot say that I have ever seen it before, a
8 hundred percent sure.

9 Q Okay. But it wouldn't be inconsistent with your
10 understanding if she were the Organizer, right?

11 A Correct.

12 Q Okay.

13 MS. LaROSE: Your Honor, I would just suggest that
14 we move -- that I would move for the admission of this
15 as a Notice issue, because this is -- these area all
16 materials available at the Company's website, and even
17 if the -- I'm sorry, the Secretary of State's website,
18 and even if the individual, for example, has not
19 recently reviewed the Articles of Incorporation, you can
20 get them from that website.

21 JUDGE STECKLER: You are taking administrative
22 notice?

23 MS. LaROSE: Correct, Your Honor.

24 JUDGE STECKLER: Objections?

25 MR. NIEW: No objection.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Mr. Williams?

2 MR. WILLIAMS: No objections.

3 JUDGE STECKLER: Union's Exhibit 17 is admitted.

4 **(Union's Exhibit 17, received into evidence.)**

5 MS. LaROSE: Thank you.

6 Q BY MS. LaROSE: The K & K employees, Mr. Needham,
7 were never covered by a Collective Bargaining Agreement,
8 right?

9 JUDGE STECKLER: Let's limit that since Needham
10 took over in 2015 from Carissa.

11 Since 2015, were they ever covered by a Collective
12 Bargaining Agreement?

13 THE WITNESS: In '15? No, I did not own it in
14 2015.

15 JUDGE STECKLER: When did -- when did Needham's
16 take over from Carissa?

17 THE WITNESS: It was -- you would have to ask Nick
18 for the exact date, but it was the middle of 2016.

19 JUDGE STECKLER: The middle of 2016, okay.

20 THE WITNESS: 2016 was his divorce date, and then
21 when I bought it, I took all of the financial liability
22 back to January 1st of 2016.

23 JUDGE STECKLER: Okay, so at that time, were the
24 employees covered by a Collective Bargaining Agreement?

25 THE WITNESS: From 2016 on?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Yes, sir.

2 THE WITNESS: I -- was our settlement agreement --
3 I have got to ask -- we had a settlement agreement, so I
4 don't know if that is covered --

5 JUDGE STECKLER: A settlement agreement with whom?

6 THE WITNESS: Local 150 -- between NEI and Local
7 150.

8 JUDGE STECKLER: If you don't know, that's -- we
9 will just save that for another witness, Ms. LaRose,
10 since you're not on the stand.

11 MS. LaROSE: Your Honor, just to clarify, the name
12 "K & K" are the initials of what were then Nick's two
13 children.

14 Q BY MS. LaROSE: Is that right, Mr. Needham?

15 A Yes, correct.

16 Q All right, and it was Carissa and Nick who were
17 running K & K, correct?

18 A No.

19 Q Okay. The Nick -- Nick got K & K as a product of
20 his divorce settlement; is that right?

21 A It was -- yeah, it was part of his divorce
22 settlement, if that is what you said, yes.

23 Q Okay. And the -- the Company never submitted
24 fringe benefit contributions on the K & K employees; is
25 that right?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A I need -- I need to go back to that last statement
2 that I said.

3 Q Okay.

4 A That Nick took possession of K & K, that never
5 happened. Joe -- NEI, or Joe Needham bought the company
6 from Carissa, not Nick. Nick did not get it in the
7 divorce settlement. I bought it in the divorce
8 settlement.

9 Q Well, we will return to that, okay?

10 A Yes.

11 Q We will come back to that, but let's finish with
12 the question I was just asking, which is, you never paid
13 fringe benefit contributions on the K & K employees,
14 right?

15 A No, because we had a settlement agreement that took
16 over for that.

17 Q Well, I mean, as one of the principals in K & K,
18 you never took the position that the contract applied to
19 the K & K employees, right?

20 A Part of the contract did.

21 Q Well, if the contract covered those employees, you
22 would be obligated to pay fringe benefit contributions
23 to the funds in that contract, right?

24 A In our settlement agreement, I had to pay the
25 employees --

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q That is not what I am asking you, Mr. Needham.

2 A Can I --

3 Q I am asking you --

4 A Okay.

5 JUDGE STECKLER: Wait a minute. Everybody is
6 talking over each other.

7 Ms. LaRose, can you please clarify what you are
8 asking?

9 MS. LaROSE: Of course.

10 JUDGE STECKLER: And then Mr. Niew can jump in.

11 Mr. Needham, don't answer until Mr. Niew has had
12 his say.

13 Q BY MS. LaROSE: Okay, K & K never applied the
14 Union's contract to K & K employees, right?

15 A I don't know how to answer that.

16 JUDGE STECKLER: To the best of your recollection.

17 Mr. Niew, did you have an objection before I --

18 MR. NIEW: I did not.

19 JUDGE STECKLER: Okay, in that case, Mr. Needham,
20 to the best of your recollection, can you give Ms.
21 LaRose an answer?

22 THE WITNESS: I don't know one hundred percent
23 where -- what she is trying to say here.

24 If the question is, did Needham Excavating ever
25 make a contribution payment to Local 150's funds for the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 K & K employees -- is that the question?

2 Q BY MS. LaROSE: Yes.

3 A Yeah, then no.

4 Q Okay. And K & K never took the position that K & K
5 was obligated to observe the Union's agreement; is that
6 correct?

7 A Which agreement?

8 Q Any of them; any contract the Union had with
9 Needham or otherwise?

10 A We had to obey our settlement agreement, so the way
11 I am understanding this, and I could be a hundred
12 percent wrong, that we -- that Local 150 and NEI entered
13 into a settlement agreement on January 1st, 2016, and I
14 had to abide by that agreement.

15 So, yes, would be my answer, that yes, I did have
16 to abide by it, because our agreement was that, in our
17 settlement.

18 Q Well, so historically, K & K has -- Needham has
19 taken the position that it has no relationship to K & K;
20 is that right?

21 A Before and when?

22 Q Well, Needham wasn't admitting in that settlement -
23 - strike that.

24 In that settlement agreement, and up to execution
25 of that agreement, Needham was taking the position that

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 K & K was unrelated and K & K mechanics were not covered
2 by the contract, right?

3 A Correct. That was true. Yes.

4 At the time of -- you are talking the settlement
5 agreement, correct?

6 Q Correct.

7 A Yes, then that is true.

8 JUDGE STECKLER: Mr. Needham, when was that
9 settlement agreement; do you recall?

10 THE WITNESS: We -- I believe it took effect
11 January 1st of 2016.

12 JUDGE STECKLER: So that was when your ownership
13 liabilities kicked in, correct?

14 THE WITNESS: That is the sketchy part. The
15 sketchy part is, yes, I took possession of it, financial
16 responsibility for it as of January 1st, 2016.

17 JUDGE STECKLER: Okay.

18 THE WITNESS: That agreement did not come into play
19 until whenever the divorce settlement come through.

20 JUDGE STECKLER: Okay, so it was retroactive.

21 THE WITNESS: That's correct, mid-summer if I
22 remember right.

23 JUDGE STECKLER: Okay.

24 THE WITNESS: We can get the exact dates if you
25 need them.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Okay, we will see what happens.

2 Ms. LaRose?

3 MS. LaROSE: Yes, Your Honor. One moment, please.

4 I am just looking something up very quickly.

5 Q BY MS. LaROSE: The Union -- the settlement
6 agreement says the Union has alleged that the Company is
7 in violation of the sub-contracting clause, the Company
8 being Needham, because it has engaged non-signatory
9 repair company, K & K, for repair of equipment, and it
10 says in this settlement that the Company denies such
11 allegations. Right?

12 MR. NIEW: Objection. He doesn't have the
13 agreement in front of him.

14 THE WITNESS: I don't have it in front of me. I
15 don't remember.

16 MS. LaROSE: No problem.

17 Can you please bring up Union Exhibit No. 6, Jim,
18 the first page?

19 **(Union's Exhibit 6, marked for identification.)**

20 MS. LaROSE: Okay, stop right there, please.

21 Q BY MS. LaROSE: Second paragraph from the top,
22 "Whereas the Union has alleged that the Company is in
23 violation of the Subcontracting clause, because it has
24 engaged non-signatory repair company, K & K, to repair
25 equipment."

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Do you see that language?

2 A Yes.

3 Q And it says, "Whereas the Company denies such
4 allegations."

5 Needham denied that K & K -- that it violated the
6 Subcontracting clause by engaging K & K, right?

7 MS. LaROSE: I think the document speaks for
8 itself, Ms. LaRose.

9 MS. LaROSE: Okay.

10 JUDGE STECKLER: Let's move on.

11 MS. LaROSE: I have just one more question about
12 this, Your Honor.

13 JUDGE STECKLER: Okay.

14 Q BY MS. LaROSE: It also asserts that K & K is a
15 double-breasted or alter-ego operation of Needham, and
16 the Company denied that, too, right?

17 A That that -- when do I deny that? You mean that
18 they -- you mean in this contract, or this settlement
19 agreement?

20 Q Yes.

21 A Yes.

22 Q Okay, and that is inconsistent with your claim that
23 the K & K people were covered by a Union agreement,
24 isn't it?

25 A Say that again now.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q The Company's denial that K & K was a double-
2 breasted or alter-ego operation is inconsistent with
3 your claim that K & K wasn't covered by a contract,
4 isn't it?

5 MR. NIEW: Objection; mischaracterizes the
6 testimony.

7 JUDGE STECKLER: I think, Ms. LaRose, it is
8 something that is best argued on the brief.

9 MS. LaROSE: Okay. Your Honor, I will move on.

10 JUDGE STECKLER: Do you want to admit Union's
11 Exhibit 6?

12 MS. LaROSE: We do. Thank you, Your Honor.

13 JUDGE STECKLER: Okay, can you scroll down so that
14 Mr. Needham has an opportunity to look at the entire
15 document real quickly?

16 Mr. Needham, is that your signature as of December
17 22nd or 23rd?

18 THE WITNESS: Yes.

19 JUDGE STECKLER: It is?

20 THE WITNESS: Yes.

21 JUDGE STECKLER: Do you recognize this document?

22 THE WITNESS: Yes.

23 JUDGE STECKLER: Objections?

24 MR. WILLIAMS: No objection for the General
25 Counsel.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Mr. Niew?

2 MR. NIEW: Objection as to incomplete document. It
3 references exhibits which have not been shown to the
4 witness.

5 JUDGE STECKLER: Okay.

6 [Long pause]

7 MS. LaROSE: Those are all of the documents, and we
8 have shown them all to the witness, Mr. Niew.

9 MR. NIEW: To save some time, we will stipulate
10 that that is a complete document.

11 JUDGE STECKLER: Okay. Any objections, Mr.
12 Williams, or did you already say no --

13 MR. WILLIAMS: Yes. No objection, Your Honor.

14 JUDGE STECKLER: Okay, Union's Exhibit is admitted.
15 **(Union's Exhibit 6, received into evidence.)**

16 Q BY MS. LaROSE: The K & K employees most recently
17 employed at K & K, I know -- strike that.

18 I know that Needham's current position is that K &
19 K is gone, or more or less gone; is that right, Mr.
20 Needham?

21 A K & K is not doing business, yes.

22 Q Okay. And -- and the Company, meaning Needham,
23 moved the K & K employees from K & K's payroll starting
24 in April of 2019, right?

25 A Sounds correct, yes.

1 Q Okay. I am showing you a document tendered to us
2 by your attorney, Mr. Needham, and it shows that -- it
3 shows the hire-in dates of various personnel, and it
4 shows that Jerad Nielsen, who is one of the challenged
5 voters here, was hired April 9 of 2019 by Needham.

6 **(Union's Exhibit 25, marked for identification.)**

7 Q BY MS. LaROSE: Do you believe that to be accurate?

8 A Yes, I believe it is.

9 Q Okay, and that Amber -- I'm sorry, that Bill
10 Bouchard was hired April 16th of 2019. Do you believe
11 that to be correct?

12 A Yes.

13 Q Okay, and Tim Hamann was hired April 24, 2019.
14 Does that sound right to you also?

15 A Yes.

16 Q Okay. And Amber Nielsen is on there as having been
17 hired April 2, 2018, and that is because she was a truck
18 driver at Needham before she went to work for K & K,
19 right?

20 A Correct.

21 MS. LaROSE: So, Your Honor, I would move for
22 admission of Union's Exhibit 25.

23 MR. NIEW: No objection.

24 MR. WILLIAMS: No objection from General Counsel.

25 JUDGE STECKLER: Union's Exhibit 25 is admitted.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MS. LaROSE: Thank you, Your Honor.

2 **(Union's Exhibit 25, received into evidence.)**

3 JUDGE STECKLER: Mr. Needham, I am a little
4 confused.

5 What happened that K & K is no longer in operation?

6 THE WITNESS: Correct. What happened?

7 JUDGE STECKLER: Yes, sir.

8 THE WITNESS: My slow business practices just
9 didn't get moved over right away. There was no need to
10 carry two different insurance policies, two different
11 liability policies.

12 One of the issues that we had moving it, or getting
13 rid of it, was getting the insurance policy to work on
14 trucks that go on the road. That is one issue that we
15 were having.

16 If my memory serves me correctly, West Bend, our
17 insurance company at the time, did not want to take on
18 that liability. So, we were just slow and dragging our
19 feet. When it became an issue, it just went to the back
20 burner and we never got it moved over.

21 And then, we talked about it in the summer of 2018,
22 and that is when we got some insurance quotes and got
23 some things figured out, and in the -- I said 2018, I
24 believe, and in 2019 we decided to just make it happen.

25 JUDGE STECKLER: Okay.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: We had two different workman's comp
2 policies. We were paying double on a lot of things.

3 JUDGE STECKLER: So you have paperwork showing this
4 decision-making --

5 THE WITNESS: Yes.

6 JUDGE STECKLER: Ms. LaRose, you can continue.

7 MS. LaROSE: Thank you.

8 Q BY MS. LaROSE: And along the lines of the sort of
9 slow business practices, if a company did not -- first
10 of all, K & K did not have a very large service truck;
11 is that right, Mr. Needham?

12 A I don't know what very large means.

13 Q I will take that back.

14 It had a service truck, right?

15 A Yes.

16 Q Did it have more than one?

17 A Yes.

18 Q Okay, were there two?

19 A Can I clarify that?

20 Q Sure.

21 A It went more than --

22 Q Okay. Understood.

23 And how many did they rent or own?

24 A Two to three.

25 Q Okay.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A No, rephrase that. They only rent. I do not
2 believe they own any.

3 Q Okay.

4 A They rent to to three.

5 A Okay. I understand.

6 And then, and -- and it used to say K & K Repair on
7 the outside of the service trucks, right?

8 A Yes.

9 Q And you mentioned slow business practices. The
10 Company -- the signs didn't get swapped out from K & K
11 to Needham until like mid-2020, right?

12 A No idea.

13 Q Okay.

14 A They said they could still be there and I agreed to
15 that.

16 Q I meant the sign outside the facility, and now I am
17 talking about the trucks.

18 So it could be that the trucks still have K & K on
19 them?

20 A If I am not mistaken, two of them still have K & K
21 on them.

22 Q Okay. And you folks normally -- because you are
23 trying to track what the Union's contract is, do you
24 folks normally give raises like once a year; is that
25 right?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yes.

2 Q And --

3 A It depends. I have got to re-say that. The
4 majority of the guys get a raise once a year. When we
5 hire a new hire, we don't know what we are getting, and
6 there is no set amount for them. There's -- there has
7 been people that we hired that has got a raise within a
8 couple of months, but --

9 Q Okay.

10 A So it is a totally different -- people misrepresent
11 themselves, and some of them don't represent themselves
12 enough.

13 Q Well --

14 A As far as giving raises out, is there a set policy?
15 No.

16 Q So, I am asking -- I think my question was
17 normally, not a set policy.

18 You -- do you normally give raises once a year?

19 MR. NIEW: Objection, he answered.

20 MS. LaROSE: No, he didn't. He specifically said
21 he did not, Your Honor. He was answering a different
22 question.

23 JUDGE STECKLER: So let me make sure I am
24 understanding this, Mr. Needham.

25 The majority of the employees get raises once a

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 year, but some new hires get raises more frequently or
2 less frequently, depending on the skills they actually
3 bring to the company; is that correct?

4 THE WITNESS: Yes, but can we go back to the once a
5 year part?

6 JUDGE STECKLER: Yes, sir.

7 THE WITNESS: Okay. I have five employees left
8 that said that would get a raise that mirrored Local
9 150's wages and benefits when we de-certified. Those
10 five employees are Brandon McKay, Ian Macumber, Tracy
11 Marshall, and Aaron Hamilton.

12 There is nothing in writing -- like I said at the
13 beginning of this trial, my word is as good as gold.

14 So I told them guys, and our agreement with them,
15 and that was after the de-certification was ratified,
16 that they would get raises the first part of the year,
17 January -- or June 1st, when 150's contract was up, they
18 would get the same wage raise and the -- they would get
19 the same wage raise, all five of them.

20 JUDGE STECKLER: But for the rest of the employees,
21 not --

22 THE WITNESS: No.

23 JUDGE STECKLER: It is not -- it is just at your
24 decision.

25 THE WITNESS: Correct.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: So it could be more or it could be
2 less.

3 THE WITNESS: Correct.

4 JUDGE STECKLER: Okay, Ms. LaRose?

5 MS. LaROSE: Thank you, Your Honor.

6 JUDGE STECKLER: Oh, before you go ahead, Ms.
7 LaRose, I'm sorry.

8 Mr. Needham, I did have another question. Where
9 are the repairs done for the Needham trucks nowadays,
10 since K & K allegedly closed up shop?

11 THE WITNESS: The trucks and the equipment get
12 repaired in the same shop that they were. I own the
13 building that K & K was in. JDN Investment owns the
14 building that is there.

15 JUDGE STECKLER: Okay, Ms. LaRose, I'm sorry to
16 interrupt. You may continue.

17 MS. LaROSE: Thank you, Your Honor.

18 Q BY MS. LaROSE: Mr. Needham, on July 9, 2019, the
19 Employer conducted a meeting in preparation for the
20 election, the last election conducted between the
21 parties, right?

22 A Conducted?

23 JUDGE STECKLER: In 2019.

24 THE WITNESS: Yeah. Which meeting? The one that
25 Bill Wheeler was to? Is that --

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q BY MS. LaROSE: Yes, and --

2 A Yes.

3 Q Sorry, and Bill Wheeler is the labor consultant
4 engaged by Needham to make a presentation to the
5 employees; is that right?

6 A Correct.

7 Q Okay. And the purpose of the meeting was to
8 explain to employees possible consequences of the
9 election, is that right?

10 A It was to inform the employees of how the election
11 worked, and what all of the possibilities were.

12 Q Okay.

13 JUDGE STECKLER: And that included the
14 consequences, correct, when you say possibilities?

15 THE WITNESS: Not all of the consequences, but some
16 of them, yes. I believe -- you said all of the
17 consequences?

18 MS. LaROSE: I said "consequences." I didn't say
19 "all," "some..."

20 JUDGE STECKLER: Okay, so we will take "some of the
21 consequences.

22 Okay, Ms. LaRose.

23 MS. LaROSE: Thank you, Your Honor.

24 Q BY MS. LaROSE: If possible during that meeting
25 that the Employer suggested to the employees that raises

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 would be suspended, isn't it?

2 MR. NIEW: Objection. Anything is possible.

3 JUDGE STECKLER: Mr. Needham, what is -- maybe this
4 will help clarify.

5 What is your recollection about the subject of
6 raises at that meeting?

7 THE WITNESS: Bill Wheeler, to my recollection,
8 took care of that part.

9 JUDGE STECKLER: So you don't remember what he
10 said?

11 THE WITNESS: Yes, that if the Union -- this is all
12 general, and I don't want to be down to a "T," but in
13 general, if the union won the election, NEI would have
14 to go into negotiations with them, which is true, and
15 all raises would be suspended until the negotiations
16 were done; raises, job classifications, and all of that
17 is what he represented it as.

18 JUDGE STECKLER: So -- so the people that were --
19 so to your understanding, Mr. Needham, is that saying to
20 the people that you had been giving annual raises to,
21 those would stop, as well?

22 THE WITNESS: Yes. That was my understanding.
23 Before that happened, I would have had to get legal
24 counsel, because there are rules in there about giving
25 raisers during the middle of negotiations.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Okay.

2 THE WITNESS: I don't know the legal part of it,
3 but before I would have given any raises, I would have
4 had to have consult legal counsel.

5 JUDGE STECKLER: Okay, Ms. LaRose, you may
6 continue.

7 MS. LaROSE: Thank you.

8 Q BY MS. LaROSE: I want to ask you some questions
9 about Tim Hamann.

10 A Yes.

11 Q You, yourself, did not make any comments about
12 wages during that meeting?

13 A Not that I recall.

14 Q Okay. And you didn't make any comments about
15 raises during that meeting?

16 A Not that I recall, no.

17 Q Okay. Tim Hamann who we mentioned earlier, he owns
18 a company called County Line Excavating; is that right?

19 A Yes, I believe so.

20 Q Okay.

21 MS. LaROSE: And, Your Honor, I would ask for
22 administrative notice of Union's Exhibit 20, which is
23 County Line's Secretary of State registration, according
24 to the Iowa Secretary of State website.

25 **(Union's Exhibit 20, marked for identification.)**

1 JUDGE STECKLER: What's the relevance of County
2 Line's registration, please?

3 MS. LaROSE: It shows Your Honor that it is
4 registered as a corporation. The name is "Excavating,"
5 similar to the business -- to the name of Needham, and
6 it is also an excavating company, I guess, which I am
7 trying to say for some reason, and that the Registrant
8 is Tim Hamann, which is on the lower part of the page,
9 and this is one of our challenged voters, Your Honor.

10 JUDGE STECKLER: Objections?

11 MR. WILLIAMS: No objection, Your Honor.

12 MR. NIEW: Objection as to relevance. County Line
13 didn't vote.

14 JUDGE STECKLER: I think -- Ms. LaRose, I think you
15 are getting specific to Mr. Hamann here?

16 MS. LaROSE: Correct, Your Honor.

17 JUDGE STECKLER: Union's Exhibit 20 is admitted.

18 **(Union's Exhibit 20, received into evidence.)**

19 Q BY MS. LaROSE: Mr. Needham, does Tim Hamann live
20 across the street from Boo; is that right?

21 A Yes.

22 Q And they are pretty good friends, right?

23 A Correct.

24 Q Okay, and Needham actually serviced County Line's -
25 - I'm sorry...

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 K & K actually serviced County Line's equipment,
2 right?

3 A Serviced it, I do not believe so. I don't know
4 what K & K all did, no. But on the 1,000 hour service
5 or whatever, I do not believe so.

6 Q Okay.

7 MS. LaROSE: I am going to need you to open Union's
8 Exhibit 65, which is...

9 *[Off the record]*

10 Q BY MS. LaROSE: Mr. Needham, this is a timecard for
11 Bill Bouchard. This is consistent with the timecards
12 that Needham keeps in terms of a form, right?

13 A I don't know what the numbers are on the left, and
14 it looks like a sticky note put on there. I don't know
15 what that is.

16 Q I am not asking you -- just to clarify, that is a
17 lot to read at once. I am just saying, does the form
18 look like your Needham timecard?

19 A Yes.

20 Q Okay. And you see how it has Bill Bouchard's name
21 at the top?

22 A Yep.

23 Q And Bill Bouchard was one of the mechanics employed
24 by K & K, right?

25 A Yes, until April, yes.

1 Q Okay, and you see that second date entered there on
2 April 17, 2019. It indicates that Bill was servicing a
3 135C for Tim Hamann, right?

4 A I don't see where it says "service."

5 Q Oh, okay. Well, if he is a mechanic, isn't it
6 likely that that is what they are doing?

7 A No. There is service, there is repairs, they are
8 putting gas in; there is all kinds of things that he
9 could have been doing.

10 Service is something like you change the oil in
11 your car; that is service.

12 Q I get it. Okay, so you guys are making it way more
13 complicated than I am, and I apologize for that. I
14 wasn't trying to embrace either one of the other.

15 But it indicates that Bill serviced, did
16 maintenance, did something to that piece of equipment
17 owned by Tim Hamann; is that right?

18 A Yes.

19 Q Okay. For the record this is part of Union Exhibit
20 65, that is Bates-stamped Number N2189.

21 So, I will return to my question from before.

22 Mr. Needham, now that you have seen this document,
23 K & K either serviced or performed maintenance on Tim
24 Hamann's machines, right?

25 A They worked on them once in a while. Everything,

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 no.

2 Q But --

3 A It is obvious they worked on them once in a while,
4 but one hour don't do very much.

5 JUDGE STECKLER: Okay, but the question is, does
6 this timecard reflect doing one hour of work on Tim
7 Hamann's truck?

8 THE WITNESS: Yes, that is what it reflects.

9 JUDGE STECKLER: Okay, thank you, sir.

10 Q BY MS. LaROSE: Okay. And then, with respect to
11 Tim Hamann, the Company gave him a 1099 in 2018, is that
12 correct?

13 A Okay.

14 Q Well, would you like me to show it to you?

15 A I cannot say for sure, Liz, but if you have got
16 one, I believe you. Yeah.

17 Q Okay.

18 A Yeah, I mean, but we don't need to take time to
19 show it to me if you have got one, but I honestly can't
20 tell you.

21 Q Okay, well why don't we pull it up since -- I mean,
22 I don't want you to commit to something you are not
23 comfortable with. So I am looking for Union's Exhibit
24 No. 33, and I am looking for N-0088.

25 **(Union's Exhibit 33, marked for identification.)**

1 Q BY MS. LaROSE: Mr. Needham, can you take a look at
2 what is on your screen now, and let me agree that in
3 2018, Tim Hamann got a 1099 from --

4 A No, I can't see --

5 Q Now?

6 A Yes, there is a 1099.

7 Okay, yeah, I will agree.

8 Q Yeah, I couldn't see it either.

9 A Yeah.

10 MS. LaROSE: Your Honor, I am going to be -- these
11 are -- this is the start of the W-2's and 1099's that I
12 am going to be referring to from time to time, which are
13 also in Union's Exhibit 65. It is a smaller group and
14 will be easier to move around in.

15 I am going to move for Union's Exhibit 33, just as
16 a demonstrative exhibit, relative to what has already
17 been admitted.

18 MR. NIEW: Your Honor, just as a clarification, is
19 it just that one page, N-0088, or the entire exhibit?

20 MS. LaROSE: I would like --

21 MR. NIEW: It has 69 pages.

22 MS. LaROSE: I would like to move the whole thing,
23 Stan, only because it is shorter than the documents
24 around it. I mean, again, this is only a demonstrative
25 exhibit, but this is already in evidence per what the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Judge said this morning.

2 JUDGE STECKLER: Mr. Williams, any objections?

3 MR. WILLIAMS: No objection, Your Honor.

4 JUDGE STECKLER: Mr. Niew?

5 MR. NIEW: No.

6 JUDGE STECKLER: All right, Union's Exhibit 33 is
7 admitted.

8 MS. LaROSE: Thank you, Your Honor.

9 **(Union's Exhibit 33, received into evidence.)**

10 Q BY MS. LaROSE: And the Company gave him a 1099 in
11 2019 also, right?

12 A If you have got it, yes.

13 Q Okay.

14 JUDGE STECKLER: Let's take a look at it.

15 MR. NIEW: *[Voice transmission garbled]*

16 JUDGE STECKLER: Okay, but -- well, let's all take
17 a look at it so that we can all be sure, since I have
18 never seen it.

19 MS. LaROSE: I am not sure it is actually in this
20 particular one. If you can scroll down to 2019.

21 JUDGE STECKLER: Mr. Needham, let me -- while --
22 while they are pulling up this document, in terms of
23 giving someone a W-4, these are people that are
24 independent contractors with you, or -- or what is their
25 status?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: A W-4?

2 JUDGE STECKLER: A --

3 THE WITNESS: W-2?

4 JUDGE STECKLER: A W-2, or whatever, sorry.

5 THE WITNESS: No, no.

6 JUDGE STECKLER: I almost failed tax, sorry. No,
7 not really.

8 *[Laughter]*

9 THE WITNESS: That is what I pay people for.
10 So what was your question?

11 JUDGE STECKLER: So when you gave it to Mr. Hamann,
12 in whatever year you gave him these, what was his status
13 related to -- from -- was this a K & K or was this a
14 Needham, and if it was Needham, was he an independent
15 contractor to you, or what is his status that you would
16 be giving him this type of a tax form?

17 THE WITNESS: The 1099's, and what I know about it,
18 because like I said, I was phasing out of the business,
19 but what I have learned in the last week or so about it,
20 the 1099's are for truck work. He sent in one of his
21 employees and his truck, his semi-tractor and trailer
22 out. That is what the 1099's are for.

23 JUDGE STECKLER: Then the other tax form, what is
24 that for?

25 THE WITNESS: The W-2's is when he was actually

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 working on our jobsites, running our equipment in the
2 spring of 2019, because it was so wet we needed every
3 person that we could get to help us try to keep
4 everything up.

5 Now, for Tim Farms, his main income is from
6 farming, and it was too wet for him to farm, and he was
7 helping us out.

8 JUDGE STECKLER: Okay, when he does that, is he
9 considered an independent contractor or just a temporary
10 employee, or how is he -- what is his relationship to
11 the business at that point?

12 THE WITNESS: In 2019, we used him quite a little,
13 up to the fall of 2019. In the fall of 2019, his full-
14 time help quit, a kid by the name of Luke, and I am not
15 sure of his last name, and that put Tim in a real
16 stretch for help, and he has never found anybody as good
17 as what Luke was, to replace him. So Tim has not been
18 helping us as much since that year.

19 JUDGE STECKLER: So, is he doing work for County
20 Line most of the time, or is he still doing all of the
21 farming, or both?

22 THE WITNESS: He does both. As far as I know, he
23 does both. I know that he farms, because I drive by his
24 farms every day, yeah.

25 JUDGE STECKLER: Okay. So -- so -- so for tax

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 purposes, you gave him W-2's, and then you also gave him
2 1099's. Was that for the same stuff, or was that for
3 different stuff?

4 THE WITNESS: Different. The 1099's were for -- he
5 sent a semi, a tub -- the way that I understand it, and
6 I think the receipts are in there somewhere in our
7 exhibits, the bills, they were for a semi and a tub, a
8 dump tub, and a driver with it. That is what the 1099's
9 are for. We used his equipment, and he was a
10 subcontractor at that point.

11 JUDGE STECKLER: Okay.

12 THE WITNESS: Okay.

13 JUDGE STECKLER: Ms. LaRose, I'm sorry to interrupt
14 your flow, so you may continue.

15 MS. LaROSE: Thank you, Your Honor. No problem.

16 Q BY MS. LaROSE: Tim Hamann did not work for Needham
17 at any time in 2018; is that right?

18 A As a contractor or as an employee?

19 Q As an employee.

20 A No, I do not believe so.

21 Q And not at all in 2020 either, right?

22 A I don't know that for sure either.

23 Q Okay. He -- before the election, he had never --
24 well -- he had not worked at Needham as an employee at
25 all before March of 2019, right?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 A Not that I recall, no.
- 2 Q So, how long has Boo been good friends with Mr.
- 3 Hamann?
- 4 A Did you say how long? I didn't --
- 5 Q Yes.
- 6 A Okay. I don't know. They are both from a small
- 7 town and Tim is a couple years younger, so they have
- 8 known each other their whole lives.
- 9 Q Okay, it has been a while, right?
- 10 A Yes.
- 11 Q And Tim is -- how old do you put Tim at? How old
- 12 is he?
- 13 A His mom is a year younger than me, or was, when she
- 14 passed.
- 15 Q I am not going to ask you your --
- 16 A Yeah.
- 17 Q But you said he was like --
- 18 A Well, him and his brother is like Nick's age, and I
- 19 am trying to get -- I would imagine he is maybe a year
- 20 or two or three. I know he is younger than Boo, but not
- 21 -- I don't know how many years for sure.
- 22 Q Okay, so how old is Boo, since he is not here right
- 23 now to offer his age.
- 24 A He was born in (b) (6), (b) (7)(C)
- 25 Q Okay. And Tim's, you know, main business has been

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 farming his whole life; is that right?

2 A Tim's? No. That is not correct.

3 Q I'm sorry, what has it been?

4 A Tim?

5 Q Yes.

6 A All I really know him from is his post-high school
7 years that I can really say much about what he did. I
8 don't know what he did through high school or anything
9 like that.

10 His post-high school years, he worked up in Liberty
11 for a farmer/excavator/tiler out of New Liberty. Rick
12 Meyer [*Phonetic*], and I don't know if that is his
13 company name, but Rick Meyer was the
14 farmer/tiler/excavator. He had -- the way I understand
15 it, he had five or six guys doing tiling and excavating
16 in the fall and helping him farm, and I don't know how
17 many years ago, Tim started farming. His mom's family
18 did very well in farming. Tim started farming, and I
19 don't know how many years ago that was. I know that he
20 started farming one of his aunt's farms, and just
21 gradually grew, and then when his uncle retired, and I
22 don't know how many years ago that was either, five,
23 six, or whatever, Tim, and boy, time flies, Tim took
24 over his Uncle Bob's farming operation, and he left Rick
25 Meyer in that timeframe, and I -- I don't know the exact

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 timeframe, but Tim had extensive experience on equipment
2 before he started farming.

3 Q Okay.

4 MR. NIEW: Your Honor, at this time, I would like
5 to object as to relevance to this whole line of
6 questioning, and, Your Honor, direct Ms. LaRose to wrap
7 this up.

8 JUDGE STECKLER: I was going to ask Ms. LaRose
9 about how much more do you have? I think everybody is
10 getting tired and zoomed out.

11 MS. LaROSE: As for lunch, Your Honor --

12 JUDGE STECKLER: Well --

13 THE WITNESS: *[Indiscernible]*

14 MS. LaROSE: I -- I am almost done with Mr.
15 Needham, I think, so if it is okay with Your Honor and
16 everyone else, I would like to just finish him per the
17 witness' request.

18 JUDGE STECKLER: Yes, let's go ahead, and then
19 after the break, Respondent can take over.

20 Go ahead, Ms. LaRose.

21 MS. LaROSE: Thank you.

22 Q BY MS. LaROSE: Okay, you indicated that he took
23 over -- he came into farming, and you made it sound like
24 it wasn't -- well, you might have known around what time
25 that was. Can you give us an estimate of when that was?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A When he took over -- started farming?

2 Q Uh-huh.

3 A I don't know. I can't tell you that, and I
4 remember that his Uncle Bob quit, and his Uncle Bob give
5 half of his land to the neighbor kid to farm and half to
6 Tim.

7 Q Okay.

8 A And --

9 Q To make it easier, Mr. Needham, was this more than
10 five years ago?

11 A I can't say that for sure. I believe it was, but
12 time flies. I would have to look back at something.

13 Q Okay. So -- so I think your testimony...

14 Jimmy Jones and Curt Stang are truck drivers, is
15 that right?

16 A Did you say Jimmy Jones?

17 Q Yes.

18 A Jimmy Jones and Curt Stang are truck drivers, yes,
19 ma'am.

20 Q Okay, and then there is a guy, John Keith, is
21 working as a truck driver now?

22 A He is working as an employee.

23 Q Okay.

24 A We don't have classifications.

25 Q Rick Needham, Jimmy Jones, and Curt Stang have all

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 been working there for more than four years, is that
2 right?

3 A I -- you would have to look at the records. I -- I
4 can't remember how far back.

5 Q Okay. Well, all three of them are still employed,
6 right?

7 A Yes.

8 Q And John has been around for more than a year, is
9 that right?

10 A I can't -- I honestly don't know when he started.
11 Like I said, I am not involved in everything, so I
12 don't -- I believe he has been there for more than a
13 year.

14 Q Your payroll records would show when he started,
15 presumably?

16 A They should.

17 Q Okay. Aaron Hamilton, Tracy Marshall, Dave Carter,
18 Ian Macumber, Brandon McKay, and Brandon Harvey are all
19 still working there, right?

20 A Yes.

21 Q And who is Joel Yustler?

22 A Yustler?

23 Q Yes.

24 A Oh, his mom grew up in Walcott. He is a guy that
25 come looking for a job, and he does a lot of pipe work

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 for us.

2 Q Okay.

3 A He is an operator and a lead man and an employee,
4 and he runs the pipe crew.

5 Q He is a pipe setter, basically?

6 A No, no. He is -- he's an employee that runs the
7 pipe crew.

8 Q Okay. And Kenny McAdoo and Clint McKinley are
9 still working at the company, right.

10 A Yes.

11 Q Okay, and -- and Clint has been working there for
12 how long?

13 A From the early 2000's, I would imagine. I -- when
14 he went full-time, I would have to look at the payroll
15 records. I could tell you the circumstances, but I
16 can't tell you the date.

17 Q All right, and when did -- when did Nick Hardt get
18 hired?

19 A Well, let's see. He was there last spring, and I
20 don't know exactly how long before that.

21 Q How about Brighton?

22 A Who?

23 Q There is somebody named Brighton working there.
24 When did he get hired?

25 A Don't know. Don't know him.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay. How about Caleb?

2 A Caleb Hunter?

3 Q Yes.

4 A He has been here a couple years; maybe two, two and
5 a half, or something like that.

6 Q Okay. And Keith Moore?

7 A Don't know him. I have met him, but you put two
8 guys together, and I would know who he is.

9 Q Okay. He -- he is an employee though, right?

10 A The name sounds familiar, I do believe, but I can't
11 swear a hundred percent.

12 Q Okay. All right. Well, if he were an employee, he
13 would be in the payroll records?

14 A Yes.

15 Q Okay. And do you remember coming to the -- strike
16 that...

17 At the hearing when we were last in Peoria
18 together, you folks showed up at the hearing with Amber
19 Nielsen as a witness, right?

20 A I would have to look, but I do believe that is
21 right. I can't say a hundred percent.

22 Q Okay.

23 A That was two years ago.

24 Q And you also showed up with Brandon McKay; is that
25 right?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Like I said, I can't swear to that, but if it is on
2 the record there, that is what it was.

3 Q Okay. And so it is possible that Brandon was
4 there, right?

5 A Yes.

6 Q The Company filed a charge against the Union for
7 allegedly promising cards and a waiting -- a waiting
8 period for people, right?

9 A Yes.

10 Q And the Company filed that charge because it was
11 concerned about employees' free choice?

12 A In what?

13 Q The Company filed that charge because it was
14 concerned about employees' free choice?

15 A No, we filed it because we thought it was an Unfair
16 Labor Practice and illegal.

17 Q Okay. And the Company has no evidence that that --
18 that the allegations, if they were true, actually
19 changed any of the voters' minds, right?

20 A Say that again, Liz.

21 Q No problem.

22 The Company has no evidence that this alleged
23 promise of a card or waiver of the waiting period
24 actually changed any voter's mind, right?

25 A What do you call evidence? When an employee says

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 something to you; is that evidence?

2 Q When a --

3 A A material piece.

4 Q Let me -- let me do it this way...

5 No employee has come to you and said, "I voted for
6 the Union because they offered me a free card," is that
7 right?

8 A Because they offered him a free card?

9 Q Right.

10 A I don't -- I don't know about the free card. What
11 -- okay.

12 Q Okay, and no employee has come to you folks and
13 said, "I voted for the Union because of the waiver of a
14 waiting period," right?

15 A No, not in those exact words.

16 Q Okay. The Company didn't offer any evidence to the
17 Board of that, did it?

18 A The only thing we had is what a couple guys told
19 us, or one guy in particular.

20 Q Ian is what we are talking about, right?

21 A Pardon?

22 Q Ian?

23 A Ian?

24 Q Yes.

25 A No.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay. And -- but the Company never offered that
2 information to the Board, did it?

3 A I don't remember what the ULP said. I don't.

4 Q Okay.

5 JUDGE STECKLER: Ms. LaRose, we will let them try
6 to prove this.

7 MS. LaROSE: Okay.

8 JUDGE STECKLER: Yes, we can recall later, if
9 necessary.

10 MS. LaROSE: Okay.

11 Q BY MS. LaROSE: Do you recall a few years ago some
12 of the heavy equipment operators gave letters to the
13 Hall resigning their Union membership, right?

14 A Yes.

15 Q And you --

16 A I --

17 Q Go ahead.

18 A Yeah, go ahead.

19 Q You handed them those letters, didn't you?

20 A Say that again.

21 Q You handed them those resignation letters to sign,
22 didn't you?

23 A Yes.

24 Q Because you had already had them typed up; is that
25 right?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yes.

2 Q There was an issue with Adam supposedly leaving a
3 window off a piece of equipment, right?

4 A Yes.

5 Q And you took a picture of that and shared it with
6 everybody else in the company, right?

7 A I don't remember if I showed it to everyone, but
8 whoever is on the e-mail list.

9 Q And even though -- and in the picture, if I am
10 recalling correctly, you actually got out of your car
11 and you were standing in front of a piece of equipment
12 to take the picture, right?

13 A Yes.

14 Q But you didn't put the window back in, right?

15 A Right.

16 Q So it was important enough to take a picture of,
17 and it is important enough to mention in connection with
18 terminating the guy, but it is not important enough for
19 you to take the ten minutes that would have been
20 required to put the window in, right?

21 A I had on good clothes. Yes.

22 Q How much is that machine worth?

23 A That one?

24 Q Right.

25 A The last time I bought it, I only paid \$65,000 for

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 it.

2 Q But you didn't pay \$65,000 for your suit, right,
3 Mr. Needham?

4 A Nope.

5 Q But the value of the equipment is probably the
6 thing you want to protect, right?

7 A The value of the equipment?

8 MS. LaROSE: I will withdraw the question. It is
9 fine.

10 My last question for this witness, Your Honor, I
11 just want to tie up the 1099 for Tim Hamann.

12 Jim is going to pull that up. That is going to be
13 marked as Union's Exhibit No. 80.

14 **(Union's Exhibit 80, marked for identification.)**

15 Q BY MS. LaROSE: Okay, Mr. Needham, can you take a
16 look at the screen?

17 A Yes.

18 Q You folks gave a 1099 to Tim Hamann for 2019; is
19 that right?

20 A Yes.

21 MR. NIEW: Objection. Mischaracterizes what the
22 document says.

23 JUDGE STECKLER: It's a Schedule A, but at the
24 bottom it says, "Form 1099," on the top half. Is that
25 correct, Mr. Needham?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: What's that now?

2 JUDGE STECKLER: I would show it to you, but I
3 can't.

4 Well, looking at the top half of this Miscellaneous
5 Income for 2019, and then in the left-hand corner -- if
6 you can make that bigger -- it says at the top of the
7 form -- yeah, that -- it says it is a 1099 - Misc. Is
8 that correct?

9 THE WITNESS: Yes.

10 JUDGE STECKLER: Okay, please continue, Ms. LaRose.

11 MS. LaROSE: Thank you.

12 Well, I think that was my only question, and I
13 think Mr. Niew registered an objection. I am assuming
14 that has been overruled, Your Honor?

15 JUDGE STECKLER: Yes.

16 MS. LaROSE: I am going to move for admission of --
17 I am going to move for the admission of Union's Exhibit
18 80, Your Honor, which is the Company's 1099's and their
19 W-2's. That is the 1099's, I'm sorry, for 2019.

20 MR. WILLIAMS: No objection from the General
21 Counsel.

22 MR. NIEW: *[Indiscernible]*

23 JUDGE STECKLER: I'm sorry, Mr. Niew, I couldn't
24 hear you.

25 MR. NIEW: Your Honor, for clarification, I'm

1 understanding that is 32 pages. Is that what Ms. LaRose
2 is offering, all 32 pages?

3 MS. LaROSE: Yes.

4 JUDGE STECKLER: And you will be using the rest of
5 the 32 pages at some point during the hearing?

6 MS. LaROSE: Your Honor -- I'm sorry, Your Honor.
7 I think --

8 JUDGE STECKLER: In your brief you will be using
9 it?

10 MS. LaROSE: Yes, Your Honor. I think, generally
11 speaking, it is helpful for Your Honor to have these
12 documents so that you can compare it to people who, I
13 think, are legitimate voters versus illegitimate voters,
14 as it relates to the challenge. So, I think the group
15 is relevant, yes, and we will be making reference to
16 other pieces of it in our brief, to the extent it
17 implicates the other challenged voters and unit packet,
18 Your Honor.

19 JUDGE STECKLER: Okay, Mr. Niew, do you have any
20 further objection there, based on Ms. LaRose's
21 representations?

22 MR. NIEW: No further objection.

23 JUDGE STECKLER: Union 80 is admitted.

24 **(Union's Exhibit 80, received into evidence.)**

25 JUDGE STECKLER: Mr. Needham, I do have one other

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 question.

2 Did the people who do the repair and maintenance
3 work at the old K & K site, did they go out to the --
4 out to the work sites to do piping and operating the
5 equipment out there, to your knowledge, as early as
6 2019?

7 THE WITNESS: It looks like --

8 JUDGE STECKLER: In 2019.

9 THE WITNESS: In 2019, I cannot say that for sure,
10 but they have in the past. Bill has went out and run a
11 roller for us. Jerrod Brink, I think I think he left in
12 2018. He is not part of the last section, but I think
13 he did a few days for us.

14 JUDGE STECKLER: Okay. I appreciate the
15 information.

16 THE WITNESS: I --

17 JUDGE STECKLER: Ms. LaRose, do you have further
18 questions based on that answer?

19 THE WITNESS: If I could have -- if I could have
20 just one more minute, just to make sure I am done with
21 everything with this witness?

22 JUDGE STECKLER: Okay, we will go off the record
23 for one minute.

24 THE WITNESS: Okay, but I got something to reclaim
25 there, Judge.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Well, we will let you do that when
2 we get back on the record.

3 THE WITNESS: Okay, yeah.

4 JUDGE STECKLER: Off the record.

5 *[Off the record]*

6 THE COURT REPORTER: We are on.

7 JUDGE STECKLER: We are back on the record.

8 Q BY MS. LaROSE: The keeper of the records for the
9 subpoena response is going to be Nick himself; is that
10 right?

11 A Yes.

12 Q Okay.

13 MS. LaROSE: And Mr. Niew and Mr. Wright, is the
14 keeper of the records for the 2000 -- for the subpoena
15 response to the unit determination proceeding, I think
16 that was Nick, but can you clarify that so I know
17 whether I have --

18 MR. NIEW: I don't know off-hand. I don't recall.

19 MS. LaROSE: Okay. Well, let's do this, Your
20 Honor.

21 If, for some reason, the Company feels that Joe is
22 the keeper of records for the 2019 materials that were
23 produced for the unit determination phase of this, I
24 will reserve the right to recall -- I am going to
25 reserve the right to recall him because of the subpoena

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 in this case, as we identify things that might be
2 relevant.

3 So, with that understanding, I -- I am done with my
4 questions for this witness.

5 JUDGE STECKLER: Okay.

6 THE WITNESS: Judge, I would --

7 JUDGE STECKLER: Mr. Needham, you said you wanted
8 to clarify an answer --

9 THE WITNESS: Yes.

10 JUDGE STECKLER: -- on the break.

11 What is the --

12 THE WITNESS: Your last question, I believe, was,
13 do the mechanics when they go out run the equipment on
14 the jobsite, correct.

15 JUDGE STECKLER: It was whether they go out.

16 THE WITNESS: Whether they go out? Okay.

17 Yes, they go out on the jobsites to repair
18 equipment and when they got to repair the equipment or
19 service it, then --

20 JUDGE STECKLER: They have to know how to run it,
21 right?

22 THE WITNESS: Yes, they got to know how to run it,
23 and they got to test it, which means they got to put it
24 under a load, which you think something, you push
25 something, you roll something, you lift something, to

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 make sure that the repair is done correctly. So --

2 JUDGE STECKLER: Okay. But some of the repairs are
3 done back in the shop, correct?

4 THE WITNESS: Correct, yes.

5 JUDGE STECKLER: Okay -- okay, so it is kind of a
6 catch as catch can, whether they are out in the field or
7 whether they are in the facility doing the repair and
8 maintenance; is that correct?

9 THE WITNESS: Yes. The emergency repairs, we try
10 to get stuff back to the shop because it is more
11 efficient, but on emergency repairs, you blow a hose,
12 something goes out where it can't move, something goes
13 wrong and you get codes with it on the machines, and the
14 computers come up with engine codes and hydraulic codes,
15 and that, they go to the field to test it, to repair and
16 test it, yes, ma'am.

17 JUDGE STECKLER: And when they were with K & K,
18 they were doing that, as well?

19 THE WITNESS: Say that again.

20 JUDGE STECKLER: When these employees were working
21 with K & K, were they doing the same thing --

22 THE WITNESS: Yes.

23 JUDGE STECKLER: -- going out to the field?

24 THE WITNESS: Yes.

25 JUDGE STECKLER: Thank you very much for clarifying

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 that. I appreciate the explanations for somebody who
2 hasn't worked in the field.

3 At this point --

4 MR. WILLIAMS: Your Honor --

5 JUDGE STECKLER: Yes?

6 MR. WILLIAMS: Your Honor, there were three quick
7 questions I failed to ask during my 611(c). May I ask
8 them real quick?

9 JUDGE STECKLER: Let me propose this...

10 Let's leave for lunch, save the questions. You
11 probably will have more questions after Respondent does
12 questions, and well, actually, since it is still on your
13 direct, we can do that first, and then we will go to
14 Respondent as soon as we get back.

15 MR. WILLIAMS: Okay.

16 JUDGE STECKLER: We will go off the record to
17 decide how long --

18 MR. NIEW: Your Honor --

19 JUDGE STECKLER: Oh, I'm sorry.

20 MR. NIEW: Before we go off the record, shouldn't
21 Ms. LaRose finish her testimony with Joe Needham? She
22 has the tax returns, and let her ask the questions
23 regarding the tax returns. I don't want to keep
24 bringing Mr. Needham back.

25 JUDGE STECKLER: Well, I -- frankly, Mr. Niew, you

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 know, we would all prefer not to, but you know, given
2 the special way the tax returns just got in, and she has
3 had to be in hearing all of this time, I have to give
4 some latitude there. So, at some point, Mr. Needham can
5 come back, but I don't expect her during a lunch break
6 to be able to review tax returns for the last two years,
7 because as I understand, there is a lot of schedules
8 attached to them. So, unfortunately, Mr. Needham may
9 have to come back. On the other hand, once Ms. LaRose
10 has reviewed it, she may decide to ask a different
11 witness, and he may not have to come back. So, that is
12 kind of where we have to leave it for now.

13 As -- as to the matter of lunch, how much of a
14 break does everybody need?

15 THE WITNESS: Five minutes.

16 JUDGE STECKLER: Well, you are better than I am.

17 *[Laughter]*

18 JUDGE STECKLER: Do you want to get out of here?
19 Yes, you do.

20 Okay, let's see...

21 I think the lawyers probably have been hearing
22 intense, and they probably need thirty minutes, and for
23 Mr. Molinaro who has been listening intently and Ms.
24 Spielberg, we need to have at least thirty minutes. Is
25 that sufficient, or do we need more time?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MS. LaROSE: Thirty minutes would be awesome.

2 MR. WILLIAMS: That's fine for the General Counsel.

3 JUDGE STECKLER: Okay, let's synchronize our
4 watches. We will come back at ten after the hour, which
5 is 3:10 on the East Coast, Central Time people, 2:10; is
6 that correct?

7 MR. WILLIAMS: Yes.

8 JUDGE STECKLER: Okay, thank you so much, and I am
9 going to turn off my screen and my video so I don't make
10 any boo-boo's like I have in previous hearings.

11 Off the record.

12 *[Off the record]*

13 JUDGE STECKLER: Back on the record.

14 Respondent may inquire at this time of Mr. Joe
15 Needham.

16 MR. WRIGHT: Thank you, Judge.

17 Just a few limited follow-up questions, I hope.

18 Q BY MR. WRIGHT: Joe, during your testimony -- can
19 you hear okay, Joe?

20 A Yep, I am good.

21 MR. WILLIAMS: Your Honor, I thought you were going
22 to --

23 JUDGE STECKLER: I'm sorry. I'm sorry.

24 Mr. Williams, I'm sorry, I'm so sorry. I am just
25 so used to that.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WILLIAMS: No problem.

2 JUDGE STECKLER: Mr. Williams, you may go ahead.

3 MR. WILLIAMS: Thank you.

4 I will make it brief.

5 REDIRECT EXAMINATION

6 Q BY MR. WILLIAMS: Mr. Needham, do you know a James
7 Walsh?

8 A Jim Walsh?

9 Q Yes, James or Jim, yes.

10 A W-a-l-s-h?

11 Q Correct.

12 A Not that I know of, no.

13 Q Okay.

14 A No, I can't think of him, no.

15 Q Okay, what about a Zachary Shea [*Phonetic*]?

16 A Yes, I know Zack, yes.

17 Q Okay, when was he hired?

18 A I would have to look, but, let's see, it would be -
19 - maybe the fall of '19.

20 Q The fall of 2019?

21 A Uh-huh.

22 Q What does he do? What are his job duties?

23 A He was just employed. Like everybody else, he did
24 what it took that day.

25 Q And --

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A He worked on the pipe crew or he worked on the
2 black dirt crew or on the skid loader, or -- he did
3 whatever it took to get the job done -- poured concrete,
4 he'd do whatever.

5 Q Did he drive a truck?

6 A A dump truck?

7 Q Yeah.

8 A I do not believe he has a CDL. I am not a hundred
9 percent sure on that.

10 Q Okay. Do you know if the Company has hired anyone,
11 or any employed, after June 10th, 2019, whose job duties
12 include driving a truck, or a dump truck?

13 A Yes. To my recollection, I believe we have hired
14 two.

15 Q Okay, do you know the names of those individuals?

16 A John Keith and Zoe Ogden.

17 Q And do you know when they were hired?

18 A No, I cannot tell you the exact dates. I would
19 have to look on the payroll records, yeah.

20 Q Okay, that's fine.

21 MR. WILLIAMS: I'm done. I'm done.

22 JUDGE STECKLER: Okay, Respondent may proceed.

23 MR. WRIGHT: Thank you, Judge.

24 CROSS EXAMINATION

25 Q BY MR. WRIGHT: Joe, do you recall during your

1 testimony with the Union Counsel, you walked through
2 some of the nicknames that were commonly used. Also
3 during your testimony, you used the term, "the boys,"
4 you referred to "the boys" a handful of times. Could
5 you just clarify -- when you say "the boys," who are you
6 talking about specifically, just for the record?

7 A Nicholas Needham, Curtis McKinley, and Daniel
8 Needham.

9 Q Okay, thank you.

10 Joe, during your testimony when Union's Counsel was
11 asking you or examining, you testified regarding the --
12 there was a Union Exhibit 17 which was the Secretary of
13 State's website filing regarding K & K filing a biennial
14 report with the Iowa Secretary of State. Do you
15 remember testifying about that?

16 A Yes.

17 Q Were you aware, at the time, that that biennial
18 report was filed with the Iowa Secretary of State, were
19 you aware at the time it happened that it was, in fact,
20 being filed?

21 A No, I was not.

22 Q Was it filed, or was that filing performed at your
23 direction, do you recall?

24 A I hired my lawyer, Dave Franks, to take care of
25 that. Dave and Katie Franks take care of making sure

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 all of the filings are done.

2 Q Okay, but you weren't aware that it was being filed
3 for the year 2021?

4 A No.

5 MS. LaROSE: Objection.

6 JUDGE STECKLER: He has already answered.

7 Go ahead.

8 THE WITNESS: Can I --

9 MR. WRIGHT: Thank you.

10 JUDGE STECKLER: Yeah, I think you have already
11 answered the question.

12 THE WITNESS: Okay.

13 Q BY MR. WRIGHT: Joe, going back to your testimony
14 when the General Counsel was examining you, you
15 testified that -- I believe you were asked about work
16 rules and regulations, and you said, "Yes, we have them,
17 but they are not in writing." Do you recall that
18 testimony?

19 A Yes.

20 Q What are some of those work rules and policies that
21 you can think of off the top of your head now that
22 weren't in writing, but may have been in place?

23 A Talking on a cell phone, smoking inside of a piece
24 of equipment that you are not permanently assigned to,
25 greasing and fueling your equipment every day --

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q What about greasing and fueling your equipment
2 every day? What do you recall about that?

3 A Every day you are running a piece of equipment, no
4 matter how minor it is, it is supposed to be fueled and
5 greased and ready to go ten hours for the next day.
6 That has been a standing practice since Day One when we
7 started in the business.

8 Q Okay. Are these rules communicated to Needham
9 employees?

10 A Yes, they know them all very clear.

11 Q How are they communicated; do you know?

12 A They are told to do it, and told what is expected
13 of them when they are hired, and how we do things.

14 Another one is warming the machines up in the
15 morning and cooling them down before you shut them off.

16 Q Okay, and did you ever have occasion to communicate
17 any of these rules to either Adam VanOpDorp or Brett
18 Gripp?

19 A To Adam VanOpDorp that I have communicated them all
20 to him multiple times. Brett Gripp, I did not have much
21 to do with his day to day employment.

22 Q During your testimony on the General Counsel's
23 examination, you were asked about who -- who has the
24 final say on discipline and discharge, and I think my
25 recollection is you talked about how it has been a bit

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 of a transition and with you taking less of a day to day
2 role. Is that a fair summation of what you said?

3 A Yes.

4 Q And then if I recollect, the Judge asked you
5 whether or not you usually follow the boys'
6 recommendations on things like that. Do you recall
7 that?

8 A Yes.

9 Q And you said that you do. Can you recall a time in
10 either 2018 or 2019 where you ever once disagreed with
11 any of their recommendations as to discipline or
12 discharge?

13 A That I disagreed with them?

14 Q Correct.

15 A No.

16 Q You were asked about attending a pre-election
17 hearing in Peoria. It was on or about July 2nd of 2019.
18 Do you recall that testimony?

19 A Yes.

20 Q You were asked whether or not Adam VanOpDorp
21 attended, and Brett Gripp attended, and you said they
22 did, correct?

23 A Correct.

24 Q And did any other Needham employees, or former
25 employees, also attend that July 2nd, 2019 pre-election

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 hearing?

2 A Yes, I --

3 Q That you --

4 A Yes, I believe Spencer Werthmann was there.

5 Q Who was Spencer Werthmann?

6 A He was a shop sweeper -- just a shop sweeper, just
7 a general nobody, who was the worst employee I have ever
8 had.

9 Q Okay, is he still employed with Needham?

10 A No, he is not.

11 Q Do you -- do you know the circumstances regarding
12 his -- about ceasing his employment with Needham?

13 A The day -- I believe it was the day after the
14 election, he went on strike.

15 Q Okay. And he never came back?

16 A No.

17 Q Okay.

18 JUDGE STECKLER: When you say, Mr. Needham, that he
19 went on strike, was he just a No-Call/No-Show or did he
20 give you an official strike notice?

21 THE WITNESS: I am not a hundred percent sure of
22 the exact timing. I believe he was -- he came to work
23 that day, and then turned in a letter that he was going
24 on strike. Him and Chad Havill turned in the same
25 letter the same day.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q BY MR. WRIGHT: You were asked during General
2 Counsel's questioning about the layoff decision of Brett
3 Gripp --

4 A Right.

5 Q And you said it was your final decision, and you
6 also told the boys when they hired him that it was a
7 mistake because of his mouth.

8 Do you recall that testimony?

9 A Yes.

10 Q Did you receive any input or feedback from Nick,
11 Curt, or Dan regarding the ultimate decision to layoff
12 Brett without recall?

13 A Yes. They were not happy with them either. There
14 was multiple things -- they told me -- he represented
15 himself the day he was hired that he could run any piece
16 of equipment. Curt Havill had to go start equipment for
17 him. Curt McKinley had to go start things for them. I
18 believe Ian Macumber had to start things for him to get
19 him on the lowboy. He didn't even know how to start
20 equipment, let alone get them on the lowboy, tie them
21 down, and to load pipe on the lowboy was another issue,
22 and --

23 Q So did you --

24 A -- he represented himself that he could do
25 everything.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay. Did any of the boys, Nick, Curt, Dan, any of
2 them, tell you that they disagreed with that ultimate
3 decision to lay him off effective June 10th of 2019?

4 A No.

5 MS. LaROSE: Objection --

6 Q BY MR. WRIGHT: Say that again?

7 A No. No, they did not.

8 MS. LaROSE: Your Honor, I have an objection.

9 JUDGE STECKLER: What was your objection, Ms.

10 LaRose?

11 MS. LaROSE: It was asked and answered.

12 MR. WRIGHT: I apologize. If he already testified
13 that they didn't disagree with it, I -- I didn't have
14 that in my notes.

15 MR. WRIGHT: That's all I have, subject to recall
16 obviously in our case-in-chief.

17 JUDGE STECKLER: Certainly.

18 Mr. Williams, any redirect?

19 MR. WILLIAMS: No, Your Honor.

20 JUDGE STECKLER: Ms. LaRose?

21 MS. LaROSE: No, Your Honor.

22 JUDGE STECKLER: So, let me make sure I am
23 understanding this correctly, Mr. -- Mr. Needham.

24 Mr. Gripp was a problem from Day One. He couldn't
25 work equipment, correct?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: I don't know exactly what he was
2 doing at the beginning, but his mouth was the problem
3 with me from Day One.

4 JUDGE STECKLER: Okay, but the other gentlemen in
5 management complained. Did they complain to you about
6 the fact that he couldn't operate certain pieces of
7 equipment as promised?

8 THE WITNESS: Me and the employees. I -- I believe
9 -- I can't remember all of the conversations that we had
10 with them.

11 JUDGE STECKLER: It was an ongoing problem all of
12 the time, or just --

13 THE WITNESS: Judge, I am gone January, February,
14 and March, so I don't get much intake.

15 JUDGE STECKLER: Okay.

16 THE WITNESS: Or input --

17 JUDGE STECKLER: Okay.

18 THE WITNESS: -- from anybody those three months.

19 JUDGE STECKLER: So during the time periods that
20 you were there, did you hear about it from --

21 THE WITNESS: I got --

22 *[Witness talking over Judge Steckler]*

23 THE WITNESS: Yeah. In the fall of the year, I am
24 usually on jobs by myself. At the most, I have got one
25 other person with me. I go back into the field and do -

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 - and run a dozer and do farm work for one of my long-
2 time customers.

3 JUDGE STECKLER: But you --

4 THE WITNESS: So I am not in touch with the guys
5 hardly at all in the fall.

6 JUDGE STECKLER: So, you don't, say at Sunday
7 dinners, talk about these things?

8 THE WITNESS: No, no.

9 JUDGE STECKLER: Okay. Mr. Williams, any further
10 questions?

11 MR. WILLIAMS: Yes.

12 JUDGE STECKLER: Go ahead.

13 FURTHER REDIRECT EXAMINATION

14 Q BY MR. WILLIAMS: Was Mr. Gripp ever disciplined?

15 A For?

16 Q For being unable to run different pieces of
17 equipment?

18 A Not to my knowledge, but like I said, I did not
19 have anything to do with day to day stuff.

20 Q Okay.

21 JUDGE STECKLER: Do you have any further questions,
22 Mr. Williams?

23 MR. WILLIAMS: No, Your Honor.

24 JUDGE STECKLER: Ms. LaRose?

25 MS. LaROSE: One moment, please, Your Honor.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 *[Long pause]*

2 MS. LaROSE: None, Your Honor. Thank you.

3 JUDGE STECKLER: Any -- anything else, Mr. Wright?

4 MR. WRIGHT: No, Judge. Thank you.

5 JUDGE STECKLER: Okay, thank you.

6 Mr. Needham, you are about to be excused as a
7 witness, however you are subject to recall, and
8 throughout the proceeding, please do not discuss your
9 testimony with anyone until after the hearing is over.

10 Do you understand that?

11 THE WITNESS: Yes.

12 JUDGE STECKLER: Okay, thank you very much.

13 THE WITNESS: Yes, ma'am.

14 *[Witness excused]*

15 JUDGE STECKLER: Okay, we will go off the record
16 for a moment while General Counsel gets his next
17 witness.

18 *[Off the record]*

19 JUDGE STECKLER: Back on the record, please.

20 Mr. Williams, please call your next witness.

21 MR. WILLIAMS: At this time, General Counsel calls
22 Nick Needham to the stand.

23 JUDGE STECKLER: Mr. Needham, please raise your
24 right hand.

25 (Whereupon,

1 **NICHOLAS NEEDHAM**

2 having been sworn/affirmed, was called as a witness
3 herein, and was examined and testified via video-
4 conference, as follows:)

5 JUDGE STECKLER: Please state your name and spell
6 it for the record.

7 THE WITNESS: Nicholas Needham; N-i-c-h-o-l-a-s,
8 N-e-e-d-h-a-m.

9 JUDGE STECKLER: And you have been observing
10 throughout this day, correct?

11 THE WITNESS: That is correct.

12 JUDGE STECKLER: And there is no one in that little
13 cubby room with you, is there?

14 THE WITNESS: Nope.

15 JUDGE STECKLER: Okay, Mr. Williams, you may
16 proceed.

17 MR. WILLIAMS: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 Q BY MR. WILLIAMS: Mr. Needham, by whom are you
20 employed?

21 A Needham Excavating.

22 Q And how long have you worked there?

23 A Pretty much my whole life minus three years I was
24 at Iowa State for college.

25 Q So, can you give us a time, a date, starting when?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A A hundred percent full-time in 200 1, September of
2 2001.

3 Q And what is your current position?

4 A General Manager.

5 Q And how long have you been a General Manager?

6 A I moved into the office in 2012, in 2012 full-time,
7 and over the years, I have just progressively been
8 taking on more and more responsibility.

9 Q And what are your duties as the General Manager?

10 A I do all of the bidding, all of the billing, and
11 then kind of -- I guess like I call myself a Senior
12 Project Manager of all of our projects.

13 Q Prior to becoming Manager, did you hold any other
14 positions?

15 A I guess I don't know what. I guess not really
16 official titles. I mean, I was an operator prior to
17 that and I have been doing some estimating since I was
18 in high school, doing take-offs and stuff.

19 Q Okay. Are you a shareholder of the company?

20 A No, I am not.

21 MR. WILLIAMS: At this time, Your Honor, General
22 Counsel requests permission to question this witness
23 under 611(c) of the Federal Rules of Evidence.

24 JUDGE STECKLER: Granted.

25 MR. WILLIAMS: Thank you.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q BY MR. WILLIAMS: To the best of your recollection,
2 do you remember how many employees Needham Excavating,
3 Inc. employed between January 1st, 2017, and July 8th,
4 2019?

5 A I think it was somewhere like between 30 and 33
6 employees.

7 Q Okay.

8 A And -- and there could have been a couple more.
9 There was a flux in there where we might have had like
10 37 or 38, but I don't remember the exact dates of that.

11 Q And what positions did these employees hold?

12 A They were -- like he said, nobody has designated
13 positions. We got -- got maybe a primary designation,
14 but like he said, everybody in our company does a little
15 bit of everything.

16 Q Well, how many employees primarily work as
17 laborers?

18 A Back then?

19 Q Yes.

20 A I don't remember the exact number, but probably
21 somewhere between five and eight, depending on the
22 timeframe.

23 Q And how many primarily worked as heavy equipment
24 operators?

25 A I think then around eleven or twelve.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q How many primarily worked as pipe setters?

2 A All of the laborers, depending -- there was
3 probably three or four guys that are probably qualified
4 as what I would call pipe setters.

5 Q And how many primarily performed work as drivers?

6 A I think four at that time, maybe five. It would
7 have been four, and then there was five.

8 Q And going back to that January 1st, 2017 to July 8,
9 2019 time period, who ran the day to day operations of
10 Needham Excavating, Inc. at that time?

11 A I did.

12 Q Okay.

13 [Long pause]

14 Q Now, are you familiar with the International Union
15 of Operating Engineers, Local 150?

16 A Yes, I am.

17 Q Okay. And isn't it true that at some point,
18 International Union of Operating Engineers, Local 150,
19 represented heavy equipment operators employed by
20 Needham Excavating, Inc.?

21 A Yes.

22 Q And isn't it true at a point in time that the Union
23 was decertified?

24 A That's correct.

25 Q Okay. Now, at any point in time, did you become

1 aware of the Union's attempt to try to re-organize
2 employees of Needham Excavating, Inc.?

3 A I heard something. I believe it was March of 2019.
4 I heard -- I heard a rumor from an employee that 150 was
5 starting to call around and talk to the guys, guys being
6 some of our employees.

7 Q And do you know if that was early March, mid-March,
8 late March?

9 A No, I don't recall that for sure.

10 Q Okay. Do you know Adam VanOpDorp?

11 A Yes.

12 Q And who is he?

13 A Adam is a former employee of ours.

14 Q And what was his position?

15 A He was primarily an operator.

16 Q Okay. Do you know if -- if Mr. VanOpDorp supported
17 Local 150's efforts to try to reorganize employees of
18 Needham Excavating, Inc.?

19 A I -- we had a meeting, I believe it was -- I think
20 it was April 11th in my office, and he walked in with a
21 150 sweatshirt. I believe it was a hoodie, a hooded
22 sweatshirt on, and --

23 Q Who was present at that meeting? When you say
24 "we," who was present?

25 A Joe Needham, Curt McKinley, Adam VanOpDorp, Tracy

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Marshall, and Aaron Hamilton.

2 Q Okay. And can you describe what -- what was said
3 during this meeting?

4 A There was -- I guess to give a little backsight to
5 it, I believe it was a Friday, maybe like March 29th.
6 Curt come into my office. Adam was working out there in
7 the Coca Cola Building, at the truck stop about five
8 minutes from our shop, and Curt went out there to get
9 him started for the day and he said that him and Adam
10 got into a huge fight and Adam was complaining about
11 some issues that he had inside the Company, so just --
12 as close as we were, I got in my truck and I drove up
13 there, and me and Adam had a discussion that day, that
14 morning. I don't know, but I would say it took probably
15 like twenty minutes. He voiced some of his concerns of
16 some of the things that were wrong in the company, and
17 by the time that he kind of, I guess, spilled -- spilled
18 his guts to me about all of his issues, we were pretty
19 much calmed down by then, and then we go back -- I go
20 back to the office, and then the following week I heard
21 something from -- I heard -- I think I heard Curt told
22 me that Jake Madden kind of had some of the same
23 concerns, so we decided to hold a meeting in our office
24 with them four guys; the four guys being Adam VanOpDorp,
25 Jake Madden, Tracy Marshall, and Aaron Hamilton, but --

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q What were their concerns?

2 A The biggest one was the health insurance.

3 Q Okay, what was it about the health insurance that
4 they had a problem with?

5 A Us as management, I guess me and my father, Curt,
6 after the de-certification, we -- we were under the -- I
7 don't want to say -- we were under the assumption that
8 what we remember saying was that we would supply them
9 the best health insurance that we could buy on the open
10 market, and the first year there was no issues, no
11 complaints or anything, and then getting into it would
12 have been, I guess, the start of 2019, I guess November
13 1st of 2018, a new policy took over, and we could not --
14 and BlueCross BlueShield got rid of the Platinum Plan,
15 as that was their top that had -- I believe it was a -
16 - I think it was a \$1,000/\$2,000 out-of-pocket, and they
17 got rid of that plan, and so the second year, they had a
18 Gold Plan, and then the maximum out-of-pocket went to
19 \$4,000 and \$8,000. So the guys were upset about that.

20 And so we had the meeting, basically just to clear
21 the air with everybody to make right on our promise to
22 them, and the three that were at the meeting said that
23 we agreed to give them the equivalent insurance to Local
24 150's.

25 That was basically the stem of the whole meeting,

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 and there was a couple other conversations in there of
2 how things were going in the company to how things were
3 getting ran, communication between the office and the
4 field workers. There was a few minor things, but the
5 majority of that meeting was about the insurance.

6 Q Okay. Now, you said that Adam VanOpDorp, when he
7 came to the meeting, he was wearing a shirt with the
8 Union insignia. Do you remember the color of the shirt?

9 A I believe it was chartreuse or safety yellow or
10 whatever you want to call it.

11 Q Okay, and the Union insignia, was it on the front
12 or the back of the shirt, or both?

13 A Honestly I never saw his back. I think it had a
14 little emblem on the front left chest.

15 Q Do you remember what it said?

16 A No, but you could see that it was a Local 150
17 sweatshirt.

18 Q Okay. And are you familiar with Brett Gripp?

19 A Yes.

20 Q And who is Brett Gripp?

21 A Brett was hired on as a primary dump truck driver.

22 Q When was he hired?

23 A October of 2018.

24 Q Okay. And what were his duties, that -- if you can
25 recall?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A There was -- Jeff Dunleavy was a former project
2 manager, site superintendent type, site manager, I
3 guess, the same role that Curt McKinley now has, and
4 Jeff is the one that approached me about hiring Jeff,
5 because Jeff was hiring trucks for, I believe, it was
6 Ledbetter Trucking on the 18th Street Project for the
7 City of Moline that we had, and Brett was not happy
8 there, and he thought -- was talking to Jeff and Jeff
9 had him go talk to Nick and Curt, and he got hired on as
10 a driver over here.

11 Q Okay, so what were his duties?

12 A When he was hired, it was to drive truck, but he
13 also gave indication that he could do anything that any
14 of our guys could do, and in Brett's terms, "I can do
15 them better than anybody."

16 Q Okay --

17 A He drove a truck --

18 Q -- what was he hauling when he drove a truck?

19 A Anything from aggregate from a quarry to a jobsite,
20 dirt, spoils from a jobsite, to a spoils site.

21 Q Now, isn't it true that Brett Gripp was laid off
22 around June 10th, 2019?

23 A Yes.

24 Q And why was he laid off?

25 A We tried keeping him -- Brett was the first full-

1 time truck driver, dump truck driver, that we had ever
2 hired. All of our other truck drivers have always been
3 part-time. So, when Brett got hired -- like I said, he
4 said he could do everything. So, the dump trucks worked
5 out slowly. We tried putting him in the lowboy to move
6 equipment to keep him busy and that did not work out
7 well.

8 JUDGE STECKLER: When did that happen, Mr. Needham?

9 THE WITNESS: I believe it was not until the spring
10 of -- early spring of '19. I don't remember him in the
11 lowboy in the fall. It is possible he could have been
12 though.

13 Q BY MR. WILLIAMS: All right, so going back to my
14 question, why was he laid off? What was the reason he
15 was laid off?

16 A Basically, Joe came into our office in April and he
17 was all worked up, and I -- I think I was in Curt's
18 office, and he come through from the shop into the
19 office up front, and pretty much said that he has had
20 enough of Brett, and he needed to leave as soon as we
21 could get rid of him.

22 Q And what -- why did he say he had had enough of
23 Brett?

24 A Brett made some comment to him regarding money and
25 trapshooting.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay. So -- so what you are saying is that Brett
2 was let go because of some comment he made to Joe
3 Needham, and because there was not enough dump truck
4 work?

5 A Yes. We were running slow on dump truck work, and
6 like I said, he had zero skillset on doing anything else
7 around the company, and there was multiple complaints
8 about him being on jobsites, getting out of his truck,
9 talking to employees, slowing the work down. There were
10 multiple complaints of that going on --

11 Q Okay.

12 A -- during his time in the company.

13 Q Okay.

14 A Okay.

15 Q But he was -- just to be clear, Brett Gripp,
16 according to the records, to the personnel records, he
17 was hired as a driver; correct?

18 A That's correct.

19 Q He wasn't hired to be an equipment operator, is
20 that correct?

21 A No, but he made -- part of us hiring him was that
22 he was a universal employee, that if we did not have
23 dump truck work, he could do other things, and that was
24 not the truth.

25 Q Right. But just to be clear, he was hired as a

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 dump truck driver, and he performed most of his duties
2 as a dump truck driver; is that correct?

3 A Yes.

4 Q Okay. Now --

5 JUDGE STECKLER: Before you -- before you continue,
6 Mr. Williams, let me jump in real quick.

7 When you said that you had complaints of him
8 getting out of the truck interrupting work, talking to
9 other people, when did those complaints start coming in?

10 THE WITNESS: There was -- there was some from
11 Tracy Marshall, would have been towards the end of
12 October or beginning of November, so in the first few
13 weeks that he was hired, when he was working on the 18th
14 Street in Moline, Tracy Marshall complained to Curt
15 McKinley about it, and then that got back to me, and
16 then I -- in spring of 2019, Chad Havill, Chad was
17 working down at Naval Station in Davenport, and Chat
18 called me direct and told me that Brett needed to get
19 off of his job, or -- because he was holding the whole
20 production up on that job.

21 JUDGE STECKLER: And what did you do when you got
22 this information from Tracy Marshall?

23 THE WITNESS: I believe I talked to Curt and told
24 him about the situation, and then I believe Curt had a
25 conversation with him.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: And --

2 THE WITNESS: Curt is kind of the middle man
3 between me and the employees, unless -- unless they call
4 me direct.

5 JUDGE STECKLER: Okay, what about Chad Havill
6 calling you directly? What happened after you finished
7 talking to him?

8 THE WITNESS: I told Chad, I said, just tell Brett
9 to get back in his truck and be a driver. If we have
10 any more issues, he was to call me back and I would take
11 care of it.

12 JUDGE STECKLER: Did you ever discuss this with
13 Brett?

14 THE WITNESS: No. I did not.

15 JUDGE STECKLER: Okay. Mr. Williams, you may
16 proceed.

17 MR. WILLIAMS: Thank you.

18 Q BY MR. WILLIAMS: Was Brett ever disciplined for
19 any of these complaints made against him?

20 A No. We don't really -- we don't have a so-called
21 discipline rule.

22 Q Okay.

23 A It is have a conversation between somebody in
24 management and the employee, and move on from there.

25 Q Are you familiar with Adam VanOpDorp?

1 A Yes.

2 Q And who is he?

3 A He was a former employee. His primary -- he was
4 primarily an operator.

5 Q Okay. And isn't it true that he was discharged on
6 July 8th, 2019?

7 A Yes.

8 Q And why was he discharged?

9 A There's -- Adam had multiple complaints, issues,
10 lack of performance issues. Talking on the phone while
11 he was working was a non-stop issue with him. I mean,
12 he would talk to his girlfriend, his cousins, his
13 family, all while trying to operate, slinging pipe over
14 the ditches with the guys down in the hole. He had been
15 warned multiple times about smoking in the machines.

16 The 11th Street Project for the City of Moline, in
17 the summer of 2018 --

18 Q Which street was that? 18th Street?

19 A No, this is 11th Street.

20 Q Okay.

21 A On the 11th Street, I brought him into the office.
22 It would have been the middle of May of 2018, because
23 this project was out in front of a school, and we have
24 basically June, July, and a week in August to get our
25 work completed. So, I brought him in in the middle of

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 May and told him that he was going to be in charge of
2 that project, and of that, we went over the drawings
3 with him, showed him what was going on, and after a
4 couple weeks, after that job was going, I was over in
5 that area and decided to stop by and see how things were
6 going, and talked to Adam on-site, and things were going
7 good, and then Erin Brunner, which would be the City of
8 Moline Inspector, she pulled me off to the side and told
9 me that she had asked Adam multiple times to do some
10 things around that project site. Some of it was getting
11 erosion control into place. They had some areas that
12 she wanted to get cleaned up as it was a safety hazard,
13 and Adam just kept blowing her off. Adam kept blowing
14 her off and not doing it. There were multiple things on
15 that job that she brought up that she was -- that she
16 had asked him at least three times, and he was yet to do
17 it.

18 Q And when did that conversation take place with Erin
19 Brunner?

20 A Middle part, maybe the end part of June of 2018.

21 Q Okay.

22 A And then I had a talk with Adam before I left that
23 job, and I said, "Everything that Erin needs done, I
24 expect it to be done tonight and cleaned up."

25 Q Okay.

1 A So that was 11th Street of 2018. As soon as he got
2 done there, he went to a job called 18th Street (B) for
3 the City of Moline.

4 Q And when was that?

5 A They started there, I believe it was the first part
6 of August of 2019, I'm sorry, 2018, my fault.

7 Q Okay.

8 A So, same situation over there. I told him -- had a
9 conversation with him that he was going to be in charge
10 of that project. Gave him the drawings, went over the
11 drawings. We had some issues up front on that project.
12 There was a water main that was too close to the
13 sanitary, so we got with the City. We kind of changed
14 the schedule of how things were supposed to happen, and
15 then once the water main was relocated, and we got the
16 houses back on the new water line, he started replacing
17 the sanitary sewer on that project, and the -- the
18 production was very slow on that project and once they
19 kind of got going on the sanitary, then I got a phone
20 call from Adam. It was the first part of October. It
21 was in the first week of October and he was like, "Hey,
22 I think we got an issue over here."

23 I said, "Oh? What's that?"

24 He goes, "We got to the first manhole and we are
25 eight inches too low."

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 So I went over there and had a meeting with the
2 City Inspector, the City Manager, on-site. I was
3 talking with Adam like, "How did this happen? Weren't
4 you guys checking your grades every day? You are
5 putting one piece of pipe in a day, so it can't be that
6 hard to get one piece of pipe set to the correct grade?"

7 He just basically put his shoulder -- shrugged his
8 shoulders and said, "I fucked up," is what he told me.

9 So, on that project alone, between costs and lost
10 revenue, it was over \$300,000 that we lost on that job
11 because of that one mistake.

12 Q And are those all of the reasons why he was
13 discharged?

14 A No, there was more.

15 Q Okay.

16 JUDGE STECKLER: Can I back up just a second?

17 On the \$300,000, Mr. Needham, when did you know it
18 was going to cost the \$300,000?

19 THE WITNESS: We didn't until after everything was
20 fixed and back in place.

21 JUDGE STECKLER: Did you start fixing it
22 immediately in October of 2018?

23 THE WITNESS: Yeah, but it was a couple weeks after
24 the fact.

25 So, the way this was scheduled, that sanitary sewer

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 which went from north to south, and he got to that first
2 manhole. They were eight inches too low, and with the
3 schedule that we had to get done before winter, we
4 decided to start at that manhole and run the rest --
5 just from that manhole to that correct grade, and
6 replace, and then replace the sewer from there to the
7 end of the project, and then we could start paving back
8 curbs and gutters, and getting the road ready for
9 asphalt.

10 So, it was a couple weeks before we went back to
11 start fixing the pipe that was installed wrong.

12 JUDGE STECKLER: So the project was completed in
13 November; is that correct?

14 THE WITNESS: Yes.

15 JUDGE STECKLER: November 2018?

16 THE WITNESS: Yes.

17 JUDGE STECKLER: Okay, just trying to get a handle
18 on the timeline.

19 THE WITNESS: We didn't get all of our job costs
20 and stuff finalized on that project until -- it would
21 have been sometime in December of that year.

22 JUDGE STECKLER: Are there any penalties -- did you
23 -- was this project late because of that, because of
24 those errors?

25 THE WITNESS: I don't remember to be honest with

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 you. I think we got by with no penalties, but I would
2 have to -- I don't believe there were any penalties on
3 that one.

4 JUDGE STECKLER: Okay, thank you.

5 Mr. Williams, I'm sorry I keep interrupting, but
6 inquiring minds want to know.

7 MR. WILLIAMS: Thank you.

8 Q BY MR. WILLIAMS: Are there any other reasons for
9 his discharge?

10 A Yeah. So we had a project at Lujack Honda in
11 Davenport. Adam was working inside of a building. He
12 was cleaning the inside of the building out with a dozer
13 and he was going in and out of it, basically pushing
14 dirt out of a building because it was too wet and they
15 needed to get the concrete floor in, so we had to get
16 the mud pushed out, and get rock put in, and I sent him
17 a text message. It would have been that afternoon or
18 evening about meeting him tomorrow morning on a
19 different project to get him some GPS equipment for
20 another job that he was going to.

21 He was like, "Oh, don't worry. I got to come to
22 the shop because I bent the laser pole on the dozer
23 backing in and out of there."

24 Q And when was this?

25 A I am going to say April, but I am not a hundred

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 percent sure on that, April of 2019.

2 Q Any other reason?

3 A Yeah. And then we had a project up in West Branch
4 called Covey Park by a guy -- didn't know anything about
5 it, and then all of a sudden I got an e-mail from the
6 concrete -- from our concrete subcontractor on that
7 project, basically with a breakdown saying, "Hey, you
8 guys ran over some ADA panels, and here is the cost to
9 replace those," and it was like \$830-some-odd. I don't
10 remember that exact figure, and I knew nothing about it.

11 I called my brother because he was working up
12 there, and he was like, "Oh, yeah, Adam ran those over."

13 And then, around that same timeframe, Adam was
14 working up at West Branch with my brother, and Adam
15 pulled up in the skid loader, close to my brother, and
16 then lit a cigarette up right inside of the cab, right
17 in front of him.

18 Q And when was that?

19 A That would have been around that same time.

20 Q April of 2019?

21 A Yes.

22 Q Okay.

23 A Yep. And I believe my brother's direct quote was,
24 "It is almost like he wants me to fire him right now,"
25 the way that he was kind of flaunting that cigarette

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 inside that cab.

2 Q Okay. Any more reasons for the discharge?

3 A Yep.

4 Q Okay.

5 A And then, on July 8th, we had -- I got a call from
6 Dolan Homes. We were doing a project for them. I got a
7 call on Monday the 8th, that morning, and they wanted a
8 bill up-to-date to see where they were on their costs on
9 that project.

10 Q Okay.

11 A Adam did not have his timecard turned in by Sunday
12 night like he was supposed to have turned in to the
13 office, so I sent Curt in to grab his timecard, and I
14 saw on -- Curt noticed that he put ten hours down for
15 the Monday before, which was wrong, because Chad Havill
16 stopped at the shop that day at 4:00 o'clock and told us
17 that Adam left the jobsite at 3:30.

18 Q What time -- do you know what time Adam supposedly
19 got to the jobsite?

20 A I would assume around 7:00 o'clock. Knowing him,
21 he was never early.

22 Q Okay.

23 A So -- and then, also on July 8th, my brother was
24 back working the second phase of 11th Street, and it
25 just happened to be that same day. In the first phase

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 we set a sanitary manhole and stuck a piece of pipe out,
2 one stick of pipe out that had new paving on it, so that
3 we could get past the new pavement, and my brother calls
4 me, and tells me that we had an issue with the pipe that
5 they had installed the previous year, had backfall on
6 it.

7 So, I called and talked to Erin Brunner, and she is
8 like -- you guys are going to have to tear up like
9 thirty foot of street and readjust that pipe, and fix it
10 before you can extend to the south with that -- with
11 that sanitary sewer. So we had to go back and break out
12 pipe, or break up that street, and I ran some quick
13 numbers of what that day was going to cost us and get
14 all of the concrete poured back, because the City was
15 not going to allow a patch in a brand new street. She
16 said it would have to be a full-width replacement, and
17 the cost was going to be somewhere around \$25-30,000.

18 So, basically with that coming up, and him
19 falsifying the timecard all in the same day, it just
20 kind of -- it was just too much. That was enough
21 mistakes and it was time for him to leave.

22 Q Okay, so you are saying that Needham Excavating
23 discharged Adam because he talked on the phone, the cell
24 phone, on several different occasions, smoked in
25 machines, I guess heavy equipment that he was operating.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yep.

2 Q The 11th Street job site issue in June 2018, as
3 well as the 18th Street job in August of 2018, and the -
4 - you said the Lujack jobsite in April of 2019, and the
5 West Branch jobsite in 2019, and the timecard -- he
6 allegedly falsified his timecard around July the 1st,
7 and then the issue around -- I guess the issue around
8 the backfill?

9 Is it backfill?

10 A Yes.

11 Q The backfill on the 11th Street jobsite around the
12 same time. Correct?

13 A That was backfall on the --

14 Q Okay, backfall.

15 A Yep. Yep, I guess that chewed out a little bit is
16 also in the spring, he was at Dan Dolan's working with
17 Chad Havill, and Chad Havill one night after work and
18 told me that Adam was sitting on a jobsite -- this would
19 have been in June of 2019. He sat and talked to, which
20 what I was told, was a former employee, Nolan Moore, for
21 like an hour and 45 minutes during working time.

22 Q Okay. So, did -- did Needham Excavating discipline
23 Adam for talking on the cell phone, smoking in the
24 machines, the 11th -- the issue with the 11th Street
25 jobsite, the 18th Street jobsite, the Lujack jobsite,

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 and the West Branch jobsite?

2 A I guess if you want to say getting his ass chewed
3 out is discipline, then yes. I mean we don't have --
4 like I said, we don't have policies in place for
5 suspension or days off or anything like that.

6 Q So there was nothing in writing to memorialize
7 these particular incidences that you have just
8 described; there is nothing in writing.

9 A No, there is nothing in writing, but there is well-
10 known policies inside Needham Excavating.

11 Q Okay, and going back to the timecard, you were --
12 so if I get this correctly, Chad Havill, around -- when
13 was it, July 1st?

14 A Yep.

15 Q Chad Havill told you and Curt McKinley, that Adam
16 VanOpDorp had left early, or had left at 3:30 on July
17 1st from the Dan Dolan's job.

18 A Yes.

19 Q And based on that discussion with Chad Havill, that
20 is what led you and Curt to come up with the conclusion
21 that Adam had falsified his timecard; is that correct?

22 A That is correct.

23 Q Okay. I am going to show you what has been
24 admitted as General Counsel's Exhibit 11.

25 Do you recognize that document?

- 1 A Yes.
- 2 Q And what is it?
- 3 A That is Adam's timecard.
- 4 Q Okay, if you -- I know it is in a different
- 5 direction, but if you follow the top line, it says, Day,
- 6 July 1st, and if you go all the way down, it says,
- 7 Regular Hours - 8, Overtime - 2.
- 8 A Yep.
- 9 Q And the number "2" is circled.
- 10 A Yes.
- 11 Q And on the right side of that "2" is an arrow.
- 12 A Yep.
- 13 Q And on the other side of that arrow, it says, "Is
- 14 wrong," and I think that is, "Should be 1/2 hour."
- 15 A Yes.
- 16 Q Who made that notation on the timecard?
- 17 A I would assume either Curt or Casie.
- 18 Q Okay, but it wasn't you. Casie who?
- 19 A Casie Morehead, our Office Manager.
- 20 Q Okay.
- 21 A I had the timecard in hand when we figured out that
- 22 there was not ten hours, and we adjusted his timecard to
- 23 match what he actually worked.
- 24 Q Okay, but you didn't -- you are not the one to make
- 25 the notation, correct?

1 A No.

2 Q Okay. Now, after -- after Adam was discharged, did
3 he file an unemployment claim with the Illinois
4 Department of Employment Security?

5 A I believe so, yes.

6 Q And did Needham Excavating respond to that claim?

7 A I would -- I don't remember exactly, but I would
8 assume that we protested it.

9 Q Okay, and who -- who normally sends out the letter
10 protesting unemployment claims? Casie Morehead?

11 A Yes.

12 Q Okay, I am going to show you --

13 A At the direction of me.

14 Q Okay.

15 MR. WILLIAMS: Give me a second.

16 *[Long pause]*

17 Q BY MR. WILLIAMS: Okay, I am showing you what's
18 been marked as General Counsel's Exhibit 14 (sic).

19 Do you recognize that document?

20 A Yes.

21 Q And what is that document?

22 A It is a letter to the Department of Unemployment
23 basically protesting that he is not eligible for
24 unemployment from us.

25 Q Okay, and isn't it -- isn't it true that the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 reason, that the one reason -- the one reason stated for
2 his discharge was allegedly falsifying his timecard;
3 isn't that correct?

4 A That is what this says, yes.

5 MR. WILLIAMS: Okay, at this time, Your Honor, the
6 General Counsel moves for the admission of General
7 Counsel's Exhibit 12.

8 MR. NIEW: Objection, just for the reasons
9 previously overruled, Judge. I think you reviewed it,
10 Judge.

11 JUDGE STECKLER: What number was that, Mr.
12 Williams? I was scribbling.

13 MR. WILLIAMS: Okay, I don't remember myself,
14 Judge.

15 General Counsel's Exhibit 12.

16 JUDGE STECKLER: Okay, for the reasons I previously
17 explained on the record, the -- General Counsel's
18 Exhibit 12 will be admitted.

19 **(General Counsel's Exhibit 12, received into evidence.)**

20 THE COURT REPORTER: Mr. Williams, what about -- I
21 believe you had said General Counsel's Exhibit 14.

22 JUDGE STECKLER: That is what I had down also.
23 That is why I asked.

24 THE COURT REPORTER: And then you moved to put in
25 General Counsel 12. I was a little confused.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WILLIAMS: It is marked as 12, so if I said 14,
2 I misspoke. There is no -- yes, it is General Counsel's
3 Exhibit 12.

4 THE COURT REPORTER: Thank you.

5 JUDGE STECKLER: Thank you.

6 Q BY MR. WILLIAMS: To the best of your recollection,
7 from June -- January 1st, 2017, to July 8th, 2019, how
8 many employees has Needham Excavating discharged?

9 A I believe three.

10 Q Okay, and one of those individuals was an office
11 clerical, correct?

12 A That is correct.

13 Q Okay, and the other two were field employees; is
14 that correct?

15 A Correct.

16 Q Okay, with respect to the two field employees, one
17 of them had been Rodney Bailey?

18 A Yes.

19 Q And was his permanent job classification truck
20 driver/mechanic?

21 A Yes.

22 Q And to the best of your recollection, was he
23 discharged November 30th, 2018?

24 A Yes.

25 Q And was he discharged for showing up inebriated to

1 work?

2 A That is correct.

3 Q And would the other person be, Joseph Neill?

4 A Yes.

5 Q And who is -- and was his permanent job
6 classification laborer?

7 A Yes, that's correct.

8 Q And was he terminated around August 26, 2019?

9 A Yes.

10 Q And isn't it true that the reason that he was
11 discharged is because he stopped showing up for work?

12 A Yes, he just stopped showing up. He quit answering
13 his phone. I think two or three days went by, and that
14 was the end of it.

15 Q Okay.

16 MR. WILLIAMS: Can I have a minute, one minute,
17 Your Honor?

18 JUDGE STECKLER: Yes, we will go off the record for
19 a moment, please.

20 *[Off the record]*

21 JUDGE STECKLER: Okay, we are back on the record.

22 Mr. Williams?

23 MR. WILLIAMS: Okay, at this time, General Counsel
24 has no further questions for Nick Needham, but we would
25 reserve the right to recall, pursuant to further review

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 of the subpoenaed records and further inspection by the
2 Respondent of personnel records.

3 JUDGE STECKLER: Okay, I have a couple of questions
4 for Mr. Needham, just for clarification.

5 You said "backfill." Can you explain to me what
6 the backfill issue is?

7 THE WITNESS: It was a backfall issue.

8 JUDGE STECKLER: Backfall, thank you.

9 THE WITNESS: So on a sanitary sewer, you have got
10 to have positive slope on the pipe, so the water and
11 debris flows downstream, and it was going the wrong way.

12 JUDGE STECKLER: Oh, was this something the
13 Inspector should have caught during the project?

14 THE WITNESS: No, the Inspector does not check the
15 grade. The Inspector is there to make sure that the
16 proper techniques and installation methods are being
17 met. They do not check your grade.

18 JUDGE STECKLER: Okay, how was it that this came up
19 months later? Were people having back-ups of sewer?
20 How was it found?

21 THE WITNESS: No, they -- so between the first
22 phase and the second phase, we did a temporary -- they
23 did a temporary connection because we were tearing out
24 old sewer and putting new sewer in. So we got to a
25 certain point and we tied the old pipe back into the new

1 pipe.

2 Does it still work? Yes, but it does not meet city
3 code. Because when we get done installing a sanitary
4 sewer, they bring in a camera crew and their survey
5 crew, and they shoot that elevation of the manholes to
6 make sure that they are right, and then they run a
7 camera through the sewer to make sure it is on grade, it
8 doesn't have valleys or humps in it.

9 JUDGE STECKLER: So, at what point did they run the
10 cameras?

11 THE WITNESS: They ran the camera on the new
12 section of pipe.

13 JUDGE STECKLER: And that was in --

14 THE WITNESS: That would have in August -- either
15 in July or August of 2018 for the new pipe that was
16 installed. They did not camera the old -- camera the
17 old section of pipe.

18 JUDGE STECKLER: Okay, did they give you any type
19 of report on this? Did the City give you any type of
20 reports on this?

21 THE WITNESS: They fill out like a weekly report.
22 I don't recall if that is in those weekly reports that
23 they camera'd -- but outside of the weekly reports, I
24 did not get anything from the City of Moline.

25 JUDGE STECKLER: Okay -- Mr. Williams, do you have

1 any additional questions, based on my questions?

2 MR. WILLIAMS: No, Your Honor.

3 JUDGE STECKLER: Okay. Ms. LaRose, do you have
4 questions?

5 MS. LaROSE: I apologize, Your Honor. I was
6 apparently on mute.

7 MS. LaROSE: I have questions, yes, Your Honor.

8 I wanted to -- I mentioned, Your Honor, at the
9 start that there may be additional documents I was
10 hoping to get in, without having to keep a Company
11 witness on the stand to go through all of them, and that
12 they were based on the Company's subpoena response from
13 the determination proceeding. Most obviously, Your
14 Honor, I would like to get in the subpoena itself to
15 Needham Excavating, as well as the subpoena to K & K.

16 The subpoena to Needham Excavating has been marked
17 and uploaded as Exhibit 55.

18 JUDGE STECKLER: Union's Exhibit 55?

19 MS. LaROSE: Correct. I'm sorry, yes.

20 **(Union's Exhibit 55, marked for identification.)**

21 MS. LaROSE: And the K & K subpoena is Union's
22 Exhibit 72.

23 **(Union's Exhibit 72, marked for identification.)**

24 JUDGE STECKLER: Okay, are you asking for Mr.
25 Needham to authenticate those, that they were received?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MS. LaROSE: I mean, I can do that, Your Honor, if
2 he remembers that far back, and otherwise, I would just
3 like to get a stipulation to get them received, because
4 it was two years ago.

5 JUDGE STECKLER: It was two years ago?

6 MS. LaROSE: Yes.

7 JUDGE STECKLER: And Mr. Wright and Mr. Pappas, you
8 were involved in those proceedings, correct?

9 MR. NIEW: No, Stanley Niew was.

10 MR. WRIGHT: Judge, I was not involved in those.

11 JUDGE STECKLER: Okay, can you stipulate to those
12 documents, or do you need to see them, Mr. Niew?

13 MR. NIEW: Can I see them, please?

14 *[Long pause]*

15 MS. LaROSE: What is on the screen right now, or is
16 coming on the screen, I should say, is going to be
17 Exhibit -- Union's Exhibit 55.

18 Scroll down a little bit please.

19 JUDGE STECKLER: You will have to blow it up a
20 little bit.

21 There we go. Can you scroll back up, please? I'm
22 sorry to have...

23 I'm sorry, can you see that okay, Mr. Niew?

24 MR. NIEW: Yes, I can.

25 JUDGE STECKLER: Okay, are you ready for them to

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 scroll?

2 MR. NIEW: I am.

3 JUDGE STECKLER: Okay.

4 MR. NIEW: You can go a little faster.

5 MS. LaROSE: We can just flip down to the remaining
6 pages.

7 Okay, that is 55.

8 JUDGE STECKLER: It has been -- did you recognize
9 Exhibit 55?

10 MR. NIEW: I recognized the document that was
11 received by Needham Excavating, yes.

12 JUDGE STECKLER: Okay.

13 MS. LaROSE: And Your Honor, since we have put the
14 response into evidence, I would like to put the subpoena
15 itself, so it is clear what the questions are that
16 Needham would answer.

17 JUDGE STECKLER: Okay, Mr. Niew, can you stipulate
18 to that?

19 MR. NIEW: I can.

20 JUDGE STECKLER: But will you?

21 MR. NIEW: Yes.

22 JUDGE STECKLER: Thank you.

23 Sorry, that was Union's Exhibit 55?

24 MS. LaROSE: It was, Your Honor.

25 JUDGE STECKLER: Any objection, Mr. Williams?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WILLIAMS: No objection, Your Honor.

2 JUDGE STECKLER: Union's Exhibit 55 is received.

3 **(Union's Exhibit 55, received into evidence.)**

4 JUDGE STECKLER: Okay, and now we are going to move
5 to Exhibit 72?

6 MS. LaROSE: Correct, Your Honor.

7 If we can scroll down.

8 *[Long pause]*

9 MS. LaROSE: I think that is all of it, Mr. Niew.
10 I think what you see on the screen right now, Paragraphs
11 1 through 9 is the only thing that was in the rider for
12 the K & K.

13 MR. NIEW: I can stipulate that that document was
14 received by Needham Excavating.

15 MS. LaROSE: Okay, Your Honor, I move for the
16 receipt of 72, Union's Exhibit 72, please?

17 JUDGE STECKLER: Objections, Mr. Williams?

18 MR. WILLIAMS: No objection, Your Honor.

19 JUDGE STECKLER: Union's Exhibit 72 is received.

20 **(Union's Exhibit 72, received into evidence.)**

21 MS. LaROSE: Thank you, Your Honor.

22 If you can bring up Exhibit 40, please?

23 I have two more, which are very short. They are
24 both lists of employees.

25 The first is Union's Exhibit 40, and that is just a

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 list of K & K employees from the Employer.

2 **(Union's Exhibit 40, marked for identification.)**

3 MS. LaROSE: I would like to admit that as well,
4 Your Honor.

5 MR. NIEW: No objection.

6 JUDGE STECKLER: Mr. Williams?

7 MR. WILLIAMS: No objection, Your Honor.

8 JUDGE STECKLER: Union's Exhibit 40 is received.

9 **(Union's Exhibit 40, received into evidence.)**

10 MS. LaROSE: Thank you, Your Honor.

11 And then the last one, Your Honor, is Union's
12 Exhibit 67. It is a list of Needham employees.

13 **(Union's Exhibit 67, marked for identification.)**

14 JUDGE STECKLER: Okay, can you scroll down, please?

15 *[Long pause]*

16 JUDGE STECKLER: Any objection, Mr. Niew?

17 MR. NIEW: No objection.

18 JUDGE STECKLER: Mr. Williams?

19 MR. WILLIAMS: No objection, Your Honor.

20 JUDGE STECKLER: Thank you.

21 Union's Exhibit 67 is received

22 **(Union's Exhibit 67, received into evidence.)**

23 MS. LaROSE: Thank you, Your Honor.

24 Your Honor, were we on the record, when we

25 clarified with Your Honor that Nick Needham was going to

1 be the keeper of the records in regard to the subpoena
2 that the Charging Party served on the Employer in
3 connection with this proceeding?

4 JUDGE STECKLER: I thought we were.

5 MS. LaROSE: Okay.

6 JUDGE STECKLER: Does anybody have a different
7 recollection?

8 MR. WILLIAMS: No, Your Honor.

9 MR. NIEW: No, Your Honor.

10 MS. LaROSE: Okay, thank you.

11 DIRECT EXAMINATION

12 Q BY MS. LaROSE: Okay, Mr. Needham, I am just going
13 to ask you some questions about the Company's records,
14 given that you are the keeper of records for this
15 proceeding.

16 Let me just make sure that I understand...

17 We have payroll records and we have timecards.
18 There is actually a report called "Payroll Record,"
19 right?

20 A Yep.

21 Q And there's -- the timecards or timesheets, as we
22 sometimes call them, supply the information for the
23 payroll records, right?

24 A That's correct.

25 Q Okay. So the employees complete the timecards.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 They turn them into the office, and then somebody from
2 the office takes the information from the timecards and
3 puts it into some kind of database or QuickBooks or
4 something, and it can be reproduced as a report called
5 "Payroll Record," right?

6 A I guess what timeframe are you referring to, Liz,
7 because we've -- as of March 1st of 2019, we no longer
8 use paper timecards -- I'm sorry, March 1st of 2020.

9 Q Okay, so you are not having people complete the
10 paper timecards anymore?

11 A No, it is all an electronic app where they can
12 select their job, equipment number, same information,
13 but it just comes in electronically now.

14 Q I got you. All right.

15 And with that understand, so you don't need
16 somebody now to make the conversion from the paper
17 timecard to the Payroll Record. I assume it is being
18 fed into a database automatically when the employee
19 fills it out on the phone; is that right?

20 A That's correct. It still needs to be reviewed.

21 Q Yes, I understand. There is nobody in the middle
22 now typing that information. Gotcha.

23 So, for the paper timecards that we have copies of,
24 there should be a corresponding payroll entry, right?
25 I'm sorry, a Payroll Record Report entry.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Theoretically, yes.

2 Q Okay. And if there is a payroll record without a
3 timecard, then the timecard is missing, right?

4 A Yes.

5 Q And I notice that there is -- there is some
6 difference between the information in the Payroll Record
7 and the timecards, and by "Payroll Record," I mean the
8 Payroll Record Report.

9 The machine number is not on the Payroll Record,
10 right?

11 A That is correct. Our software does not keep that
12 as part of payroll.

13 Q Okay.

14 A After it is processed.

15 Q Okay. There's -- okay, so I am going to move to
16 the Payroll Record Report now.

17 There's no dispute between us that Adam did heavy
18 equipment operation and not laboring or truck driving or
19 mechanical work, right?

20 A He did do some laboring at times.

21 Q Okay, but very little, right?

22 A I guess it depends on your definition, but more
23 operating than laboring, yes.

24 Q Well, he -- would it be fair to say that he did,
25 and I don't mean to belabor this, but I am going

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 somewhere else with this just to clarify the payroll
2 records...

3 He didn't do more than, say, more than ten percent
4 of his time doing laboring, right?

5 A I would be guessing, but I don't know of an actual
6 percentage.

7 Q Okay, well, it wasn't thirty percent laboring, is
8 that right?

9 A I would assume, no.

10 Q And it probably wasn't even twenty percent, right?

11 A Overall, probably not. I am sure there were some
12 days when he didn't hardly run any equipment.

13 Q I am talking totally on average.

14 A On average, yes, less than twenty.

15 Q Okay, and on cost -- on the Payroll Record there
16 are cost code numbers.

17 A Yep.

18 Q And then there is -- you know, there is like an
19 activity -- I would say, yeah, an activity, maybe
20 generically that is tied to those numbers, right?

21 A Yes.

22 Q Well, if there is a better word for it, then --

23 A No, I am just trying to get where you are going, so
24 say, Cost Code 120, Site Grading.

25 Q Right.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A That could be somebody running a shovel,
2 backfilling a curb when we are putting black dirt down,
3 and that gets put down as 120. We don't have a laborer
4 cost code for the site grade portion of things.

5 Q All right, I gotcha.

6 Okay, and -- but 161, 201, and 81, and I don't know
7 why all three of those end in "1," but maybe -- but
8 those all come out as something-something labor --
9 laborer. When it actually says "Laborer" in the
10 activity, it is laborer work, right?

11 A Correct. That means 81 is sanitary, the laborer
12 side of the -- putting sanitary sewer in, and 201 is the
13 laborer side of the water main.

14 Q Okay, and the other thing that I noticed when I was
15 going through the payroll records, the Payroll Record
16 Report, is that when you -- there are sometimes you see,
17 Mr. Needham, a notation "RI Laborer wage," or something
18 like that.

19 A Yes.

20 Q That is a reference to the Rock Island County
21 prevailing wage rate; is that correct?

22 A That's correct.

23 Q And that would mean that that individual was
24 supposed to be paid according to the Rock Island County
25 prevailing wage rate for laborers, right?

1 A Yes, if that is how it is labeled, yes.

2 Q And -- and that person would have been performing
3 laborer work then, correct?

4 A Yes, on that particular project, yes. As long as
5 they filled out their timecard correctly.

6 Q And then I noticed that Cost Code 141 is
7 Mobilization; is that right?

8 A Yes.

9 Q And it seems like, after reviewing the timecards,
10 that that cost code is one that most of the time is
11 going to cover truck driving work.

12 A Driving the lowboy, but not hauling -- not dump
13 truck time.

14 Q Understood, but it is a truck is what I am saying,
15 of some kind.

16 A Correct.

17 Q Okay, and on the timesheets, and I said this
18 earlier, but I want to make sure I said this, on the
19 timesheets, if an employee runs a machine or drives
20 truck, the employee is supposed to put their machine
21 number on there, is that right?

22 A Supposed to, yes.

23 Q Okay, and the cost code 126 is "Replace Topsoil."

24 A Yes.

25 Q That could mean handwork or equipment work, is that

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 right?

2 A Yes, it could. On the 120 codes, our guys do a
3 very poor job of isolating out, I would say, probably
4 closer to 95 percent of the time, they put down 120,
5 just as a general number instead of --

6 Q Okay, yeah. And Cost Code 160 could be handwork or
7 machine work, right?

8 A Theoretically, it should be machine work only. 161
9 should be the laborer side.

10 Q But it might not always be, because I know that I
11 saw a --

12 A It could be. Like I said, I do -- I am not in
13 charge of the review of timecards anymore.

14 Q Okay.

15 JUDGE STECKLER: Mr. Needham, when did you stop
16 reviewing the timecards?

17 THE WITNESS: I think the -- I think I stopped the
18 end of 2017 or the first part of 2018, and then Jeff
19 Dunleavy reviewed them. It might have been the end of -
20 - I don't recall, to be exact. It has been a few years,
21 because Jeff Dunleavy was reviewing them the last year
22 that he was working for us, which was 2019, so I might
23 have been doing them in 2018 then.

24 JUDGE STECKLER: Okay, after he left, who did it --
25 who is doing it?

1 THE WITNESS: Curt McKinley is in charge of
2 reviewing timecards and going through everybody's rock
3 tickets and stuff like that, then give that to Casie.

4 JUDGE STECKLER: Okay, Ms. LaRose?

5 MS. LaROSE: Okay, thank you.

6 Q BY MS. LaROSE: In order to enable us to read the
7 timesheets a little bet better, Mr. Needham, if on a
8 timesheet, we see the word "hauled" or "moved," it means
9 that something, material, it could have been a piece of
10 equipment, but it means that something got moved with
11 truck, right?

12 A Yeah, more than likely, yes.

13 Q Okay. And if on a timesheet it says "Salary
14 Hours," what does that mean?

15 A I guess what employee are you referring to?

16 Q You know, I wish I knew. I'm sorry. I did not
17 write down which --

18 A Okay, so we have a few employees that are salaried,
19 so their timecards getting turned in are for job costing
20 only. They obviously, being on salary, are not paid off
21 of what their timecard hours are. The timecard hours is
22 more to get the equipment costs or labor costs into that
23 projects reports.

24 Q And that -- I mean, that way, you can -- I mean,
25 you can even gauge the quality of your own estimating

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 work, right?

2 A Yeah.

3 Q You know, how close you came to estimating the
4 costs correctly.

5 A Yes.

6 Q And if I see office work on a timecard, I am going
7 to assume that a person was working in the office, is
8 that right?

9 A Yes, that is correct.

10 Q Okay, and "Shop" if that is on a timecard, or
11 "Shopwork" on a Payroll Record, means the person worked
12 indoors that day?

13 A Not necessarily. It could be anywhere from cutting
14 grass to sweeping the floors, depending on the employee,
15 it could be that they worked in the shop helping change
16 oil. The last few years during the winter, we have
17 rebuilt two buildings, two storage buildings in Walcott
18 where we had employees out doing carpentry work, and
19 stuff like that. That gets charged off to shop work, as
20 well. So it doesn't necessarily mean that they were in
21 the mechanics shop doing shop work.

22 Q Right, I just said indoors. I wasn't --

23 A It is just something that basically they are doing
24 for the Company on one of our many properties.

25 Q Okay, and that explains the notation "Construction

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 - Permanent Yard," or words to that effect?

2 A Yes.

3 Q That appears on the Payroll Record?

4 A Yes.

5 Q For a mechanic, shop work probably means work
6 inside the shop, right?

7 A Yes. More than likely -- I mean, yes.

8 Q Okay. And when somebody like Amber is writing
9 "Shop Work" on her cards, I am assuming that means some
10 kind of indoor work; is that right?

11 A I would assume, but without seeing a timecard, I
12 can't be certain. It could be her running after parts
13 for the mechanics or running errands for me or Curt or
14 something along them lines.

15 Q Okay, but it wouldn't be -- if a person is saying
16 "shop work," they probably are not out doing
17 construction on a customer's jobsite, right?

18 A Correct.

19 Q Okay. And I am going to ask about a couple of
20 entries I saw.

21 A jackhammer is not a piece of heavy equipment; is
22 that right?

23 A No, but it gets charged -- it is an attachment that
24 goes on a loader, backhoe, skid loader, or a big
25 excavator, depending what jackhammer it is, and that

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 gets put into our project costs as a piece of machinery,
2 because it has a dollar amount, say, per hour, that it
3 is worth.

4 Q A timesheet that just says "per diem," what does
5 that mean?

6 A We had one project out in Knoxville, Iowa that the
7 guys had to -- it was like 2 hours and 15 minutes from
8 our shop. We gave them a daily per diem to be working
9 out of town.

10 Q How do your guys know -- I don't know how many per
11 diem jobs you guys have a year, so I don't know how you
12 are going to answer this question very easily, but if an
13 employee just writes "per diem," and there is multiple
14 per diem jobs, how does your staff, or how do you know
15 which job it was?

16 A We have had one job recently that has had per diem
17 on it.

18 Q I see, okay. And -- so there is not enough that
19 there is an issue.

20 A Right.

21 Q Okay. I understand.

22 And what kind of job was that?

23 A Site grading, site utilities. A project at a 3M
24 plant.

25 Q Okay. Bill Bouchard was a mechanic at K & K, is

1 that correct?

2 A Primarily a mechanic, yes.

3 Q Okay, and he was paid a salary, correct?

4 A Yes.

5 Q And...

6 MS. LaROSE: Jim, can you put Exhibit 39 up there,
7 please?

8 (Union's Exhibit 39, marked for identification.)

9 [Long pause]

10 MS. LaROSE: Go down. Keep going.

11 There we go.

12 Q BY MS. LaROSE: Mr. Needham, can you see the
13 Payroll Summary that we have up on the screen?

14 A Yes.

15 Q Okay, and this is Bill Bouchard's Payroll Summary
16 for K & K?

17 A Yes.

18 Q And it indicates in there, off to the left, that he
19 gets a salary, right?

20 A Yes.

21 Q Okay, and the other employees that are on this
22 summary, he was the only salaried person at K & K; is
23 that right?

24 A That's correct.

25 Q Okay.

1 MS. LaROSE: Your Honor, I am going to move for the
2 admission of this Union's Exhibit 39.

3 MR. WILLIAMS: No objection, Your Honor.

4 JUDGE STECKLER: Mr. Niew?

5 MR. NIEW: This is Stan.

6 Could I see all four pages?

7 [Long pause]

8 MR. NIEW: Ms. LaRose, there were numbers that I
9 couldn't quite grasp on the lower left-hand corner. Can
10 you tell what those numbers are; 002?

11 MS. LaROSE: That's the Bates-stamping that my
12 office performs, Stanley --

13 MR. NIEW: Oh, I just wasn't able to make them out.

14 MS. LaROSE: Yeah, I got you.

15 So, it is --

16 Jim, if you can go back?

17 Okay, so it is K0002 through -- what is the last
18 digit -- 05? Oh, it is longer than I thought.

19 Okay, so K0011 is the last page of the exhibit.

20 MR. NIEW: Your Honor, it shows four pages, and --
21 where are the rest of the pages?

22 JUDGE STECKLER: Ms. LaRose, did you just select
23 certain documents?

24 MS. LaROSE: Your Honor, I have had this exhibit
25 prepared for I don't know how long, and I think that is

1 possible, so I will stipulate -- if it makes Mr. Niew
2 more comfortable, it is just some of the employees.
3 Everything that Nick Needham just said is correct.
4 Nobody else is paid a salary on this list, and nobody
5 else on any of the K & K payroll, as far as I know, was
6 paid a salary.

7 MR. NIEW: Then the stipulation from Ms. LaRose,
8 then is not a complete list of K & K Repair payroll, I
9 would have no objection.

10 JUDGE STECKLER: Okay, Union's Exhibit 39 is
11 admitted.

12 MS. LaROSE: Thank you, Your Honor.

13 **(Union's Exhibit 39, received into evidence.)**

14 MS. LaROSE: Could you please bring up Union's
15 Exhibit 47?

16 **(Union's Exhibit 47, marked for identification.)**

17 *[Long pause]*

18 JUDGE STECKLER: So this one starts with K0079?

19 MR. NIEW: I can't read the K numbers on my screen.

20 MS. LaROSE: I'm sorry, Mr. Niew.

21 Your Honor, this is -- this is an assortment of ten
22 cards from different spots in the Employer's production.
23 I did that so that we would not have to scroll through
24 the entire production to find them, so this is one of
25 those exhibits that I am simply offering really more for

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 demonstrative purposes. If it doesn't tie out to actual
2 timecards in the Employer's subpoena response, then
3 obviously it is valueless, but it does. These are
4 pictures of timecards, that I will ask Mr. Needham
5 specific questions about them.

6 JUDGE STECKLER: Okay, so are we looking at a
7 specific timeframe, or are we looking at the -- at just
8 selected pieces? And, the next question is, it is
9 thirteen pages; is that correct?

10 MS. LaROSE: Yes.

11 JUDGE STECKLER: Go ahead and question, and then we
12 will see about admission.

13 MS. LaROSE: Okay.

14 Q BY MS. LaROSE: Directing your attention, Mr.
15 Needham to this timecard which is marked as K0293, the
16 timecard is a K & K timecard, right?

17 A Yes.

18 Q It is not a Needham timecard.

19 A We have -- they are similar timecards. We have got
20 boxes of timecards that are laying on the floor that are
21 leftover from K & K, and I believe that even to this
22 day, that they are still using some of those just to use
23 them up, just because the name is on there.

24 Q Well, okay. But this is -- this is the timeframe
25 that K & K is supposedly gone. This is April 19, 2019.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 The whole --

2 A Sometime around there is when the switchover --
3 when the K & K employees came to Needham.

4 Q Okay, and we can talk about that, so you and I are
5 a hundred percent on the same page.

6 So, this timecard is -- is -- for the week ending
7 April 19th, 2019. Do you see that, Mr. Needham?

8 A Yes.

9 Q And just as a point of clarification, the K & K and
10 Needham timecards are not exactly the same, right?
11 Forgetting the names of the companies, they are not
12 exactly the same in terms of the information that they
13 collect, right?

14 A Correct.

15 Q Okay. This timecard is in Bill's handwriting,
16 correct?

17 A I believe so.

18 Q Okay, and then skipping past the K & K cards...

19 MS. LaROSE: Jim, please go to N2189.

20 *[Long pause]*

21 MS. LaROSE: Thank you.

22 Perfect. Scroll up a little bit.

23 Q BY MS. LaROSE: Now, this is a Needham timecard,
24 right?

25 A Yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And it is for the same week, only this time it is
2 identified as week ending April 20, which I think was
3 probably a Saturday or something.

4 There is also time for Mr. Bouchard working for
5 Needham Excavating; is that right?

6 A That is correct.

7 Q In fact, on the same day that the week ending --
8 well, strike that.

9 This timecard is in -- it is apparently in Amber's
10 handwriting, isn't it?

11 A I am not sure if it is Amber's or Casie's.

12 Q But it is not Bill's, right?

13 A No. Not in the lower left.

14 Q And the entry for Tim Hamann is not in Bill's
15 handwriting either, right?

16 A I am not a hundred percent sure. It doesn't look
17 the same.

18 Q It doesn't does it, and neither does the -- so the
19 entries for April 17 and April 19 are in either Casie or
20 Amber's handwriting; is that correct?

21 A That's correct.

22 Q Okay, and Amber often capitalizes her R's, even
23 when they should be lowercase; that was something I
24 noticed in her -- in the record she was keeping. And
25 somebody, perhaps Amber, did this little accounting in

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 the lower left on the PostIt note, showing the number of
2 hours worked for K & K versus the number of hours for
3 Needham, right?

4 A Yes.

5 Q And during this particular week, Bill -- Bill
6 worked 38 hours for K & K and then he -- I'm sorry, 41
7 hours for K & K -- I'm sorry, 38 for K & K and 3 hours
8 for Needham, right?

9 A I --

10 Q I was right the first time; 41 hours for K & K and
11 3 hours for Needham; is that right, Nick?

12 A Yes.

13 Q Thank you.

14 And this -- this -- this is probably the timeframe,
15 the week when people were moved, Bill, at least, and not
16 people, I should say, Bill was moved from the K & K
17 payroll to the Needham payroll, right?

18 A Yeah, I believe that was his last week on K & K
19 payroll.

20 Q Okay.

21 A But -- can I say something?

22 Q I think -- go ahead.

23 A Sometime in the spring of '19, we -- if the Jered
24 Nielsen or Bill Bouchard, for example, were working in
25 the shop, that time was getting charged to K & K. If

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 they had to take a service truck to a project site, we
2 were starting to charge that off to Needham, because we
3 needed a transition in there to get them from one
4 payroll to another as K & K still had bills coming in
5 and they still needed labor income to keep up with their
6 bills through the transition.

7 Q Okay, so --

8 MS. LaROSE: Jim, I can't see that at all, the way
9 the screen is positioned -- I can't see what number we
10 are on here.

11 Okay, good.

12 Q BY MS. LaROSE: Bill did not work at Needham, at
13 all, in 2018, right?

14 A I don't believe so.

15 Q All right.

16 A I am not a hundred percent without going back
17 through records.

18 Q Okay. And -- and, in fact, he has not been on the
19 payroll of Needham, at all, in 2017 either; is that
20 correct?

21 A I am not positive, but you would have to check
22 payroll records.

23 Q Okay, and the answer would be the same for 2016, as
24 well, right?

25 A Correct.

1 Q I mean, he didn't perform -- as far as you know
2 without checking his records, he was not on Needham's
3 payroll at all, prior to this week of April 19th, 2019,
4 right?

5 A Like I said, without going back through payroll
6 records, I don't exactly remember all of the
7 transitions.

8 Q Okay. Were there other transitions? I mean, were
9 there other movements of Bill Bouchard between
10 companies?

11 A I didn't -- no, I didn't -- I -- I meant the one
12 transition bringing him in from K & K into Needham.

13 Q But I am not asking you about that one transition.
14 I am talking about years way prior.

15 A No, not that I recall.

16 Q Okay, so just so it is clear for the record, and --

17 A I said not that I would recall, but I would have to
18 double-check payroll records, and that would show if he
19 had or not.

20 Q Okay, I just want to make clear what timeframe you
21 are answering this question about.

22 I am asking about anytime before April of 2019.

23 A Correct, and as I said, I do not -- I do not think
24 so, but I would want to double-check to be certain of
25 those.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay, and you say you do not think so, in part,
2 because, I mean, you are working for the Company, but
3 you do not recall him working directly for Needham at
4 any time prior to April of 2019, correct?

5 A Correct.

6 Q Okay, I want to talk about Jered now.

7 Jered was also a mechanic who worked at K & K?

8 A That is correct.

9 Q Okay.

10 MS. LaROSE: Okay, go to the very -- I think the
11 very first page -- a little over -- and then tell me
12 what the first -- okay...

13 Q BY MS. LaROSE: Now, looking at K0079, same
14 exhibit, Union's Exhibit 47, this is the specific time
15 card for Jered Nielsen for the week of April 8, 2019,
16 right, Nick?

17 A Yes.

18 MS. LaROSE: And could you go to the next page,
19 Jim, please?

20 Q BY MS. LaROSE: And now we are on Page K0083.

21 A Uh-huh.

22 Q K0083 is a K & K timecard, right?

23 A Yes, that is what is in the left-hand corner.

24 Q And there are three entries scratched out for the
25 week ending April 12, 2019, and Needham is written over

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 it. Do you see that?

2 A Yes.

3 Q Okay, and then Needham, handwritten, that is not
4 your handwriting, correct?

5 A I honestly don't know.

6 Q Oh, okay.

7 MS. LaROSE: All right, Jim, can you go to K0084,
8 please?

9 Q BY MS. LaROSE: That is another K & K timecard for
10 April 13, 2019; correct?

11 A Yes.

12 MS. LaROSE: Scroll down to 219.

13 Q BY MS. LaROSE: Now, this timecard, which is the
14 same week, is a Needham timecard, right?

15 A Yes.

16 Q And this one is entirely in Amber's writing, isn't
17 it?

18 A It appears that way, but I am not a handwriting
19 expert, so I don't know. It appears that is in Amber's
20 handwriting though.

21 Q And -- okay, and the previous timecards were all,
22 except for the Needham notations that -- the scratch-
23 outs where Needham was written in, were all written in
24 Jered's handwriting, correct?

25 A That is correct.

1 Q When I compare all three timecards, what I see is
2 that there is an identification of a piece of equipment
3 that he is working on in all three, in the description,
4 material section?

5 A Yes.

6 Q And it looks like this was the week when Jered got
7 moved to Needham's payroll; would you agree with that?

8 A I believe so, yes.

9 Q And Jered, like Bill, did not work for Needham
10 before April 13 -- well, the week of April 13, 2019; is
11 that right?

12 A I believe that to be correct, but I would have to
13 double-check the payroll records.

14 Q Okay, that's fair.

15 A And -- go ahead.

16 Q And as in the case with Bill, you just do not
17 remember an instance where Jered was working directly
18 for Needham before that, is that right?

19 A Like I said, not that I can remember.

20 Q Okay.

21 A I would have to look at payroll.

22 Q Okay.

23 MS. LaROSE: Your Honor, I am going to move for the
24 admission --

25 THE WITNESS: Can I add something to this, Liz, on

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 the timecards with Amber's writing and Jered's writing,
2 and everything?

3 MS. LaROSE: You will have to wait for your Counsel
4 to ask questions, okay?

5 THE WITNESS: Yep.

6 MS. LaROSE: I would move for the admission of 47,
7 Your Honor. Just to keep the record clear, it is -- as
8 I said before, it is really more of a demonstrative
9 exhibit, more than anything else.

10 MR. WILLIAMS: No objection, Your Honor.

11 MR. NIEW: No objection, but with the caveat that -
12 - that is not a complete set of either K & K or Needham
13 Excavating timecards.

14 MS. LaROSE: And I will stipulate to that, Your
15 Honor.

16 JUDGE STECKLER: *[Inaudible - muted]*

17 MS. LaROSE: Your Honor, you might be muted.

18 JUDGE STECKLER: You are right. Thank you.

19 It is probably in more records than anybody wishes
20 to hear, "You are muted."

21 But, yes, Union's Exhibit 47 is admitted.

22 **(Union's Exhibit 47, received into evidence.)**

23 MS. LaROSE: Thank you, Your Honor.

24 Q BY MS. LaROSE: Point now, Mr. Needham, to Rick
25 Needham.

1 [Voice transmission garbled] prevailing wage jobs,
2 right?

3 A Possibly.

4 Q Okay.

5 A Like I said, without going back through the
6 records, I would assume that at one point he was on a
7 certified payroll project.

8 Q And if so, he will be in the Company's production
9 of certified payroll records, right?

10 A That's correct.

11 Q Would it surprise you if I told you that in every
12 certified payroll record since 2018, at least the middle
13 of 2018, he has appeared as a truck driver?

14 A Would it surprise me?

15 Q Yes.

16 A No.

17 Q Okay, and that is because he is performing truck
18 driving work most of the time, right?

19 A It depends on -- it depends on what timeframe you
20 are looking at, and what part of the -- what part of the
21 year you are looking at.

22 Q Okay.

23 MS. LaROSE: Your Honor, I would like to -- strike
24 that.

25 Can you go to Exhibit 46 for me, please, Jim?

1 JUDGE STECKLER: While they are pulling up an
2 exhibit, Mr. Needham, just to refresh my recollection,
3 Mr. Needham -- Mr. Rick Needham is what relationship to
4 you?

5 THE WITNESS: He would be my uncle.

6 JUDGE STECKLER: Does he have any other position
7 with the Company besides working in the field?

8 THE WITNESS: Besides an employee, no. He is just
9 another normal employee.

10 JUDGE STECKLER: Except he is your uncle, okay.

11 THE WITNESS: Correct.

12 JUDGE STECKLER: Okay.

13 Ms. LaRose, what document number are we looking at
14 here?

15 MS. LaROSE: 46, Your Honor.

16 **(Union's Exhibit 46, marked for identification.)**

17 JUDGE STECKLER: Thank you.

18 MS. LaROSE: I'm sorry, Your Honor. I am just
19 trying to track down something so I could...

20 Q BY MS. LaROSE: Mr. Needham, I think the Employer
21 has assembled a document that is intending to move for
22 admission. I think it is payroll, or at least what they
23 are calling payroll -- let's see what it actually looks
24 like. This is not the payroll record that I am used to.
25 But having looked through Mr. Needham's timecards

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 for the period immediately preceding the election, would
2 it surprise you if I said that he worked eight total
3 days, where he even conceivably operated heavy
4 equipment?

5 A Can you repeat that?

6 Q Of course.

7 We are talking about the period just prior to the
8 election, for now, okay.

9 Would it surprise you if Rick Needham, according to
10 his timecards, may have operated heavy equipment a
11 maximum of eight days prior to the election?

12 MR. NIEW: Objection, vague, form.

13 JUDGE STECKLER: Ms. LaRose, can you kind of
14 identify what -- a little more specifically the time
15 period?

16 MS. LaROSE: Sure.

17 Q BY MS. LaROSE: In the twelve months prior to the
18 election.

19 A You are saying there are only eight days?

20 Q There are only eight days, maximum.

21 A I would have to go back through and look at those
22 because I thought he had more than that.

23 Q Okay. I am going to look at the records I think
24 the Employer is intending to introduce for a similar
25 timeframe, and it is definitely under thirty days,

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 assuming this represents heavy equipment operation.

2 Would that surprise you that it is less than thirty
3 days?

4 MR. NIEW: Objection, vague.

5 JUDGE STECKLER: Ms. LaRose, if you have got the
6 documents, let's take a look at them.

7 MS. LaROSE: It is Respondent's Exhibit 11, Your
8 Honor; I'm sorry, 14 -- oh, no, it is 11. Maybe -- it
9 is labeled 14 -- the actual document says Exhibit 14,
10 Your Honor.

11 JUDGE STECKLER: Mr. Niew, what's the -- when you
12 get it up here, you will have to tell us what the real
13 number is, whether it is 11 or 14.

14 MR. WRIGHT: Judge, I -- while he is pulling it up,
15 I think I can clarify it by --

16 JUDGE STECKLER: Okay.

17 MR. WRIGHT: Respondent's Exhibit 11 was a number
18 of documents that I believe that Mr. Niew got those
19 from, perhaps the election, as part of that. We -- we
20 Bates-stamped it our R ExH-11, at the very bottom, but
21 there are some old stamps, because they were used as
22 part of that election exhibit. I didn't redact them.
23 We didn't have clean copies. So, R-Exhibit 11 at the
24 very bottom at center --

25 JUDGE STECKLER: I see it.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WRIGHT: Does that make sense?

2 JUDGE STECKLER: So, at the bottom left, actually
3 towards the side --

4 MR. WRIGHT: That is old --

5 JUDGE STECKLER: The R-11 is old or --

6 MR. WRIGHT: No, the left center, upwards of R-ExH-
7 11, that is for this proceeding.

8 JUDGE STECKLER: Okay.

9 MR. WRIGHT: The stamp in the bottom left-hand
10 corner where it says "Exhibit 14?"

11 JUDGE STECKLER: Yes.

12 MR. WRIGHT: This was introduced -- I don't know
13 which hearing it was, but we just didn't black it out.

14 JUDGE STECKLER: Okay.

15 MS. LaROSE: Okay.

16 JUDGE STECKLER: So this is R-11?

17 MR. WRIGHT: Correct.

18 Q BY MS. LaROSE: Okay, so there are 1, 2, 3, 4, 5,
19 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
20 21, 22 -- there are 22 entries on here.

21 JUDGE STECKLER: On Page -- on the one that we are
22 looking at right now?

23 MS. LaROSE: It goes to the second page, Your
24 Honor.

25 JUDGE STECKLER: Okay, I see where it says

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 "Continued."

2 Q BY MS. LaROSE: So, given that, does it surprise
3 you that he worked under thirty days doing heavy
4 equipment prior to the election?

5 A During that timeframe, no.

6 Q Okay, and --

7 A Because Rick is -- he is --

8 Q There is --

9 MS. LaROSE: Your Honor, I am going to ask the
10 witness to just answer the question. I did not --

11 JUDGE STECKLER: A lot of the questions that you
12 will get, Mr. Needham, at this point, will be yes or
13 no's, so, if --

14 THE WITNESS: Okay.

15 JUDGE STECKLER: -- Mr. Niew or Mr. Wright want to
16 pick it up later, they can.

17 THE WITNESS: Okay.

18 JUDGE STECKLER: I think the question was, Ms.
19 LaRose, was that Mr. Needham, you were not surprised
20 that it was less than thirty days --

21 THE WITNESS: Correct.

22 JUDGE STECKLER: -- during that time period.

23 THE WITNESS: That's correct.

24 JUDGE STECKLER: Okay.

25 Q BY MS. LaROSE: Okay, and prior to the election,

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 the Company produced us the timecards for the last
2 twelve months for Rick Needham. You were the designated
3 keeper of records. You are comfortable agreeing that
4 you posted that, right?

5 A Yes.

6 Q And my review of that, show that he ran heavy
7 equipment for no more than eight days.

8 MR. NIEW: Objection. Is there a pending question,
9 or is Ms. LaRose testifying?

10 MS. LaROSE: Well, I am asking the witness a
11 question.

12 JUDGE STECKLER: Would you like to scroll through
13 46, please?

14 Q BY MS. LaROSE: So, for example, 46 are all of his
15 timecards from what you folks produced to us.

16 MS. LaROSE: Your Honor, we can handle this however
17 you like, but there are only eight days where this
18 individual did have this work, and almost everything
19 about these timecards illustrates that.

20 For example, Jim, if you don't mind stopping on any
21 one of these...

22 Actually go to -- keep going. Okay.

23 JUDGE STECKLER: So, let me make sure I am
24 understanding correctly with the codes and the
25 timecards.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Where it says eleven loads, that is driving a
2 truck; is that correct, Mr. Needham?

3 THE WITNESS: Yes.

4 JUDGE STECKLER: And then "took vac to Des Moines"
5 is kind of explanatory.

6 THE WITNESS: It is a vac.

7 JUDGE STECKLER: Oh, I thought he was taking a
8 vacation. What is he taking to Des Moines?

9 THE WITNESS: It is just -- it was a pull-behind
10 vac for earth excavation. It hooks up to the back of a
11 pickup that we used on -- I believe that is the 11 --
12 the 18th Street project. We used it for a couple days,
13 and then we had to take it back to Des Moines. That was
14 the closest one that we could find to rent.

15 JUDGE STECKLER: Okay, so when you do that, is that
16 considered heavy work?

17 THE WITNESS: Mobilization, I guess you would call
18 it.

19 JUDGE STECKLER: It is mobilization, but it is not
20 actually doing -- operating heavy equipment on a
21 jobsite, right?

22 THE WITNESS: Correct.

23 JUDGE STECKLER: Okay, let's see if I can -- any of
24 them that say "Load," he is driving a truck, is that --
25 am I understanding that correctly?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: For the most part, yes.

2 JUDGE STECKLER: Okay, we are looking at this one
3 page here in September 2018.

4 Could you blow it up a little bit, please, sir --
5 well, not actually blow it up. Just shrink it a --

6 Can you see it okay, Mr. Needham?

7 THE WITNESS: Yes.

8 JUDGE STECKLER: Are any of those that you can see
9 on that one page marked N-1161, are any of those
10 considered operating heavy equipment?

11 THE WITNESS: No.

12 JUDGE STECKLER: What is "Helping plumber unclog
13 F/S toilet, cleaning up mess?"

14 THE WITNESS: I am assuming the toilet plugged, and
15 he was the lucky guy to go down and sweep all of the
16 water off the floor and push it near a floor drain.

17 JUDGE STECKLER: Okay, I just wanted to make sure.

18 THE WITNESS: Right.

19 JUDGE STECKLER: Okay, so it is an ugly job, but it
20 is not operating heavy equipment; is that what you are
21 saying?

22 THE WITNESS: Yes.

23 JUDGE STECKLER: Okay. Scroll down just a tad more
24 so that I can make sure I understand -- make sure I am
25 understanding things.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MS. LaROSE: Your Honor, if maybe I can help here.

2 JUDGE STECKLER: Please.

3 MS. LaROSE: Yes, 47 is a truck, the Machine No.

4 47?

5 THE WITNESS: Yes.

6 JUDGE STECKLER: Okay. Okay. Okay, let's stop
7 here at 1197 for a moment.

8 It is "Loads, Load, Loads, Loads, Loads," and then
9 at the bottom it says, "To Sheriff Tim Lane's house."

10 Do you recall what that was about?

11 THE WITNESS: Yes, hauling two loads of 1-H clean.
12 I don't know why -- it is just a two line description.

13 JUDGE STECKLER: Okay, so he is still hauling
14 there, then.

15 THE WITNESS: Yes.

16 JUDGE STECKLER: Okay. Okay, so on this one, on
17 October 24th, where it says, "Ran Roller at Portillo's?"

18 THE WITNESS: Yes.

19 JUDGE STECKLER: Is that heavy equipment operation?

20 THE WITNESS: Yes, that heavy equipment operating.

21 JUDGE STECKLER: And then it goes back to hauling
22 loads again.

23 THE WITNESS: Okay.

24 JUDGE STECKLER: So he did five and a half hours
25 that day running the roller.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: Correct.

2 JUDGE STECKLER: Okay. Okay, Ms. LaRose, how do
3 you want to handle the rest of this exhibit?

4 MS. LaROSE: Your Honor, I think you have mostly
5 covered it with -- with some very good questions that I
6 think are going to help inform the record, which is, you
7 know.

8 If you look, Your Honor -- well, Jim, go to N1130,
9 please, if you can find it.

10 Much as Your Honor noted, when this individual says
11 he is on a roller, you know, he is arguably -- arguably
12 doing heavy equipment work. It is basically the same
13 piece of equipment, over and over and over again, and it
14 is a total of eight days.

15 So, what I would just do, Your Honor, is I would
16 like to -- I would like to -- I'm sorry, just for
17 clarity's sake...

18 Q BY MS. LaROSE: November 11, 2008, Mr. Needham --
19 Where it says "Red 4840 - Roller Soccer Fields,"
20 that is another example --

21 A Yes.

22 Q -- of what you guys would consider to be heavy
23 equipment work, right?

24 A Yeah, that is a John Deere 4840 farm tractor with a
25 pull-behind sheepsfoot on it.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay, and all this individual did over these eight
2 days -- well, strike that.

3 MS. LaROSE: Your Honor, I am going to move to
4 admit this document. It is going to be, again, more of
5 a demonstrative exhibit because all of these time cards
6 are already in the record as part of Union's Exhibit 65,
7 but just for the purpose of clarity, in case we need to
8 handle them again, I have bundled them as Union's
9 Exhibit 46, and I would like to admit them.

10 JUDGE STECKLER: General Counsel?

11 MR. WILLIAMS: No objection from the General
12 Counsel.

13 JUDGE STECKLER: And these -- the whole exhibit is
14 Mr. Needham's timecards, correct?

15 MS. LaROSE: Yes, Your Honor.

16 MR. NIEW: Your Honor, I would like to ask Ms.
17 LaRose if that is a complete set of timecards. I can't
18 tell from the --

19 MS. LaROSE: Yes. I believe those are all of his
20 timecards.

21 MR. NIEW: Your Honor, I have no objection.

22 JUDGE STECKLER: Union's Exhibit 46 is admitted.

23 **(Union's Exhibit 46, received into evidence.)**

24 Q BY MS. LaROSE: Mr. Needham, that exhibit that I
25 showed you earlier, that was -- that is the Employer's

1 exhibit, did you assemble that document?

2 A The time cards for --

3 Q I'm sorry, I apologize.

4 The document that we showed you earlier that was
5 marked, that was an Employer's exhibit that you folks
6 were planning to introduce, Employer's Exhibit 11?

7 Did you have to assemble Employer's Exhibit 11?

8 A If it was previous from two years ago, I can't say
9 for certain.

10 MS. LaROSE: Put it on the screen please, Jim.

11 Okay. Thank you.

12 Q BY MS. LaROSE: Is that familiar, Mr. Needham?

13 A Yeah.

14 MR. NIEW: I'm sorry, I didn't hear the question.

15 MS. LaROSE: I asked if it looked familiar to him.

16 THE WITNESS: Yes. I did those for the -- yeah,
17 two years ago. Those are reports ran by me.

18 Q BY MS. LaROSE: Those are unit determination
19 proceeding exhibits.

20 I don't know why I am asking you that question,
21 sorry.

22 The -- did you help put together this exhibit?

23 A Yes, that is from my account off our accounting
24 software, so I had to run it.

25 Q And when you say your accounting software, you are

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 talking about the Payroll Record?

2 A Sage Accounting that we use. If you look in the
3 lower-left by Exhibit 14?

4 Q Uh-huh.

5 A It has a "Name - Report, Nick."

6 Q Uh-huh.

7 A That means that it was created out of my account.

8 Q Gotcha. Okay.

9 And this is the same database that is supplying,
10 Sage is the same database that is supplying us with the
11 Payroll Record Report, right?

12 A Correct.

13 Q So you said that it doesn't keep track of the
14 machine number, right?

15 A It -- no, I -- our software keeps track of the
16 number until you process payroll, and then it separates
17 -- so when you input everything, you can see the
18 employee for each day, the cost code, the project, what
19 equipment they are on, but as soon as payroll gets
20 computed for the week, it breaks the equipment out and
21 puts that into the job costs reporting, and breaks it
22 out separate from the payroll.

23 Q Okay, so estimating, etc. purposes. Costing
24 purposes, right?

25 A Yes.

1 Q Okay. And that information, though, is not on this
2 report, right?

3 A That is correct.

4 Q Okay. All right. Moving on to Amber Nielsen.
5 She still works in the shop, correct?

6 A That is correct.

7 Q Okay, and she was the Shop Supervisor for K & K,
8 correct?

9 A I would say Shop Coordinator, not Supervisor.

10 Q Okay, and she was -- and she performs that same
11 role inside that same shop today, correct?

12 A Correct.

13 Q She is not a mechanic, right?

14 A Well, she can do some things. I mean, in heavy
15 equipment, can she pull a motor out of a machine and put
16 a new motor in, no. Can she change the oil in
17 something, yes.

18 Q Well, I can change the oil in something, but -- I'm
19 sorry, I didn't mean to get -- but she is not -- my
20 question is, she is not a mechanic, right?

21 A No, not normally.

22 Q Nor has she ever been a mechanic, right?

23 A Well, like I said, she has changed oil, so to me
24 that makes her a mechanic for that time.

25 Q Okay, that's good to know.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 You produced -- produced a personnel file for her
2 from K & K, correct?

3 A I did not do the personnel file.

4 Q Okay, somebody -- somebody else did, is what you
5 are saying.

6 A Yes.

7 Q Okay. All right.

8 MS. LaROSE: Let's go to 50.

9 [Long pause]

10 (Union's Exhibit 50, marked for identification.)

11 Q BY MS. LaROSE: Mr. Needham, is it fair to say that
12 Amber was a -- was a Needham's truck driver for a period
13 of time, right?

14 A At one point, yes.

15 Q And then after that, and I don't know how long that
16 lasted, she went to work for K & K, correct?

17 A I honestly don't remember her -- when she was
18 hired, who she was hired by off the top of my head right
19 now.

20 Q Okay. She started at -- well, would it surprise
21 you if I told you that she started at K & K around
22 November, the end of November of 2018?

23 A No, it would not surprise me.

24 MS. LaROSE: Can you pull up K0421?

25 [Long pause]

1 MS. LaROSE: That's it right there, and then what
2 is the one before it. I mean, what's the date. I'm
3 sorry.

4 Okay, these were not quite in order, so that is
5 part of the problem.

6 Okay. Thank you.

7 Q BY MS. LaROSE: Comparing these various documents,
8 it looks like Amber worked at K & K from November 26,
9 2018 until at least June 15th, 2019.

10 MS. LaROSE: Can you pull up K0420, please?

11 Let the record reflect that we are looking -- that
12 we are comparing now K0421 and K0420, which are two of
13 Amber's timecards.

14 Q BY MS. LaROSE: Does that sound like June?

15 A No, not June of 2019. I would have to check
16 payroll records, because she -- like I said, they are
17 using up some K & K timecards, so just because it is on
18 a K & K timecard does not mean it was not Needham
19 payroll.

20 Q Okay, I see. If she -- and we can sort this out, I
21 would assume, by looking at --

22 A Payroll records.

23 Q Right. Because whenever she first appears on the
24 payroll record after November 2018, is when she resumed
25 working for Needham again; is that right?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Correct.

2 Q Okay. If you could --

3 MS. LaROSE: Could you scroll through her timecards
4 again, please, Jim?

5 You don't have to rotate them. Just go through
6 them so people can see what is on them, because we will
7 be here all day if we stop and rotate all of them. They
8 were produced -- keep going.

9 Q BY MS. LaROSE: Those timecards just show shop work
10 after shop work after shop work. What that means is
11 that she worked inside the shop, right?

12 A Yeah. It doesn't necessarily mean that she was
13 inside the whole time. She could be running errands, or
14 -- yes.

15 Q Okay.

16 A Yeah, she could be out of the shop.

17 Q And if we see "shop work" on there, that means that
18 she worked inside the shop or running errands, or some
19 kind of shop-related, mostly indoors, tasks for each of
20 the days represented on these timecards; is that right?

21 A Yes.

22 MS. LaROSE: Your Honor, I am going to move for the
23 admission of Union 50, which are all of Amber's
24 timecards from K & K for the period prior to the
25 election, or I will say, because I understand what the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 witness is saying, all of the timecards labeled "K & K"
2 for the period prior to the election.

3 MR. WILLIAMS: No objection, Your Honor.

4 MR. NIEW: No objection, with that understanding
5 that they are labeled "K & K."

6 JUDGE STECKLER: Okay, Union's Exhibit 50 is
7 admitted.

8 **(Union's Exhibit 50, received into evidence.)**

9 MS. LaROSE: And I would like to go to Union's
10 Exhibit 51.

11 **(Union's Exhibit 51, marked for identification.)**

12 *[Long pause]*

13 MS. LaROSE: Okay, Jim, go to N2230.

14 Q BY MS. LaROSE: Okay, I see that in June, June 8th
15 of 2019, all of a sudden we go from "shop work, shop
16 work, shop work," to these entries, which say, "Sand,
17 Screening, Dirt on Site."

18 She is doing truck driving work; is that right?

19 A That was on a --

20 Q My question was, she was doing truck driving work,
21 right?

22 A Well, that's -- no. That is not a CDL-required
23 truck. That is a --

24 Q I am not asking --

25 MS. LaROSE: Your Honor, if I --

1 JUDGE STECKLER: Let me try to figure out.

2 What is Code 124?

3 THE WITNESS: 124 is "cut to fill."

4 JUDGE STECKLER: What does that mean?

5 THE WITNESS: That is just moving material on-site,
6 basically.

7 JUDGE STECKLER: Why was she out of the shop?

8 THE WITNESS: Because that job was for Cubby Park
9 and we had to bring lime into a baseball -- a new
10 baseball field that we were doing new fences, and we had
11 to use a utility vehicle, kind of like a John Deere
12 Gator or a Polaris Ranger with a dump box on it.

13 JUDGE STECKLER: Is this related to the Chicago
14 Cubs?

15 THE WITNESS: Just like the Gator's they use on
16 their fields.

17 JUDGE STECKLER: Okay.

18 THE WITNESS: But --

19 JUDGE STECKLER: But -- but up until this point,
20 she hadn't been doing this type of work; is that
21 correct?

22 THE WITNESS: Correct. That was the spring that
23 was -- it was wet. We were behind schedule at Cubby
24 Park, and it took a lot of manpower when you are using
25 small vehicles like that going through the fence, so we

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 don't tear up the grass that was already established, to
2 get the material moved. I think we had -- we had
3 multiple of them, many material haulers on-site, and it
4 just was taking up a lot of labor, so we needed anybody
5 -- everybody that we could get to do that.

6 JUDGE STECKLER: So it was only because of the wet
7 spring. You didn't continue to use them shortly
8 thereafter; is that correct?

9 THE WITNESS: Without looking at timecards, that is
10 very well a possibility.

11 JUDGE STECKLER: Okay, and she still did some work
12 at K & K that week; is that correct, looking at this
13 timecard?

14 THE WITNESS: I would assume, yes.

15 JUDGE STECKLER: Okay, so she did -- according to
16 the PostIt on this timecard, she did 34 1/2 hours at K &
17 K and at Needham, she did 5 1/2 hours of regular, and
18 then 18 hours of overtime. Is that a correct reading of
19 this document?

20 THE WITNESS: Yes.

21 JUDGE STECKLER: Ms. LaRose?

22 MS. LaROSE: Oh, Your Honor, these are all of her
23 Needham timecards for the period prior to the election,
24 that were produced to us. The previous set were the
25 timecards for K & K. For the purpose of clarity in the

1 record, I would like us to move Exhibits 50 and 51.

2 I'm sorry, we already moved 50, but I would like to
3 move Union's Exhibit 51.

4 MR. NIEW: No objection.

5 MR. WILLIAMS: No objection, Your Honor.

6 JUDGE STECKLER: Okay, Union's Exhibit 51 is
7 admitted.

8 **(Union's Exhibit 51, received into evidence.)**

9 MS. LaROSE: Okay, can you bring up 34?

10 **(Union's Exhibit 34, marked for identification.)**

11 *[Long pause]*

12 MS. LaROSE: Can you scroll down, please?

13 For the record, this is -- we are looking at
14 Union's Exhibit 34.

15 MS. LaROSE: Scroll down, please Jim.

16 Okay, there -- scroll up -- okay.

17 Q BY MS. LaROSE: Mr. Needham, I see on some of the
18 payroll records, it says "Valerie/advance."

19 A Yep.

20 Q That means that the individual -- that means that
21 the individual was receiving a salary; is that correct?

22 A That is correct.

23 Q Okay, thank you.

24 MS. LaROSE: Your Honor, I am going to move Union's
25 Exhibit 34.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 You know what? I'm sorry. I have one more
2 question on this.

3 Q BY MS. LaROSE: It says Dan Needham, Joseph
4 Needham, Nicholas Needham, that is you...

5 MS. LaROSE: Please keep going, Jim.

6 Q BY MS. LaROSE: ...Julie Needham, Jamie Anderson,
7 Adam VanOpDorp -- no, I'm sorry, not Adam VanOpDorp.
8 Well, he is on there, but he is not salaried.

9 MS. LaROSE: Go back up, please, Jim.

10 Okay, yeah, I got the names right. Keep going to
11 the top, please.

12 Clint McKinley, and -- all of those people received
13 salary; is that's correct?

14 A For that month, yes.

15 Q Okay. Well, do some people receive salary
16 intermittently?

17 A Can you define intermittently?

18 Q Yes, I will. On and off.

19 A Not to my recollection, no.

20 Q Okay, thank you.

21 MS. LaROSE: Your Honor, I am going to move to
22 admit 34, which shows the people who are salaried with
23 the company during that timeframe.

24 MR. WILLIAMS: No objection, Your Honor.

25 MR. NIEW: Objection as to relevance. What

1 relevance is Nick Needham's salary, Curt McKinley's
2 salary, Aaron --

3 MS. LaROSE: All people are compensated depending
4 on whether they are properly -- will inform the Judge as
5 to whether these people are properly included in the
6 unit.

7 JUDGE STECKLER: Mr. Niew, does that satisfy your
8 question?

9 MR. NIEW: I -- I'm sorry, I couldn't har the
10 entire response. May I ask Ms. LaRose to repeat it?

11 MS. LaROSE: All people are compensated and this
12 will help the Judge to determine if they are properly
13 members of the bargaining unit.

14 MR. NIEW: I have the same objection.

15 JUDGE STECKLER: Okay, I am going to overrule the
16 objection, and Union 34 is admitted.

17 MS. LaROSE: Thank you, Your Honor.

18 **(Union's Exhibit 34, received into evidence.)**

19 Q BY MS. LaROSE: I am going to move on to Tim Hamann
20 now.

21 Mr. Needham, Tim did not get a W-2 from Needham in
22 2018, did he?

23 A Not to my recollection.

24 Q Okay. So he did not work as an employee for
25 Needham that year; is that right?

1 A I do not believe so.

2 Q Okay. And do you remember that exhibit that we
3 were looking at before that was yours from two years
4 ago, Respondent's Exhibit 11? Tim Hamann is in there
5 also. Yeah, he is in 11, Employer's Exhibit 11, and he
6 is on the page actually marked with the label "11" from
7 our prior proceedings.

8 MS. LaROSE: Can you get it a little bit bigger,
9 Jim.

10 Thank you.

11 Q BY MS. LaROSE: According to this document, he only
12 worked six days performing bargaining unit work prior to
13 the election; is that right?

14 A I don't know how many days without going back
15 through the timecards.

16 Q Oh, I see. This is --

17 A Or weeks.

18 Q I gotcha. Okay. Well, okay, that's fine.

19 So, there is only a total of sixty hours on here,
20 in only six weeks, right?

21 A Correct.

22 Q Okay. And do you folks have anything that is going
23 to show how many days he actually performed heavy
24 equipment work, or are we going to be asked to rely on
25 these summaries of the week?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A I believe all of his timecards were submitted.

2 Q To us. Okay.

3 [Long pause]

4 MS. LaROSE: Go to Exhibit 45, please.

5 **(Union's Exhibit 45, marked for identification.)**

6 Q BY MS. LaROSE: One other question...

7 Can you confirm that he did not work for Needham,
8 at all, in 2020?

9 A Yeah, I do not believe that he did.

10 Q And he has not worked for Needham at all in 2021,
11 either; is that right?

12 A No. I believe he has worked for us this year.

13 Q Okay.

14 A I would need to double-check payroll records, but,
15 yeah.

16 Q It couldn't have been very much; is that right?

17 A Depending on how you define "not very much."

18 Q Under a week?

19 A No, he has had more days than that, I believe.

20 Q Okay. These are all of Tim Hamann's timecards that
21 were produced for the twelve months prior to the
22 election, and I am seeing a total of thirteen days in
23 here. Does that surprise you?

24 MS. LaROSE: Let's show him the whole document
25 before he makes a statement.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MS. LaROSE: Yes, ma'am.

2 Okay, why don't we start at the first page, Jim,
3 and I don't think you need to rotate it unless he tells
4 you he can't read it.

5 THE WITNESS: You don't have to rotate it.

6 MS. LaROSE: Scroll out, please, I mean, zoom out.

7 Let us know when you are done reviewing each of the
8 ten cards, okay?

9 JUDGE STECKLER: It starts with 4-17-2019; is that
10 correct?

11 MS. LaROSE: Yes, Your Honor.

12 JUDGE STECKLER: Thank you.

13 [Long pause]

14 MS. LaROSE: On that one, you might have to zoom in
15 on. You don't have to rotate it, but it is pretty
16 small.

17 Q BY MS. LaROSE: Okay, Nick, have you read that one?

18 A I am good with that one. I can't see that;
19 everybody's face on the right side of the screen.

20 Okay.

21 JUDGE STECKLER: What is that description?

22 THE WITNESS: Demo.

23 JUDGE STECKLER: Okay.

24 THE WITNESS: Demolition.

25 JUDGE STECKLER: Okay, so that would involve heavy

1 equipment then, wouldn't it?

2 THE WITNESS: Yes.

3 JUDGE STECKLER: Okay, I just wanted to make sure.

4 MS. LaROSE: Have you already reviewed that one,
5 Nick?

6 THE WITNESS: Yes.

7 MS. LaROSE: Okay, there is no other?

8 THE WITNESS: No.

9 MS. LaROSE: Okay.

10 Q BY MS. LaROSE: So there are four timecards, or
11 there were four timecards in there. Having taken a look
12 at those, are you comfortable with -- strike that...

13 Does it surprise you that this individual's
14 timecards show that he only did thirteen total days of
15 heavy equipment work in the twelve months prior to the
16 election?

17 A No.

18 Q Boo stood up at his wedding, right?

19 A I honestly don't know. I was not there.

20 Q Fair enough.

21 His first day working for Needham was April 17,
22 2019. Does that sound about right to you?

23 A I believe so, yes.

24 Q His first day ever working for Needham was April
25 17th, 2019, right?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: As an employee.

2 THE WITNESS: As an employee, yes.

3 Q BY MS. LaROSE: And he was only working -- he was
4 rarely working more than a couple hours a day, correct?

5 A That's correct.

6 Q Okay. He was not doing any mechanic or truck
7 driving work, right?

8 A Not as an employee of ours, no.

9 Q Okay.

10 MS. LaROSE: Your Honor, I am going to move for the
11 admission of Union's Exhibit 45.

12 MR. NIEW: No objection.

13 MR. WILLIAMS: No objection.

14 JUDGE STECKLER: Union's Exhibit 45 is admitted.

15 **(Union's Exhibit 45, received into evidence.)**

16 MS. LaROSE: Thank you, Your Honor.

17 Jim, can you pull up 32?

18 **(Union's Exhibit 32, marked for identification.)**

19 Q BY MS. LaROSE: I am showing you a document that we
20 have marked as Union's Exhibit 32. These are the
21 Needham Unemployment Tax Returns. These returns are for
22 the third quarter 2017, through the first quarter 2019.

23 I believe --

24 MS. LaROSE: Jim, can you scroll through these so
25 that Nick can see them?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

```
1      The return actually starts with the page we started
2  with.  These are the schedules.
```

3 [Long pause]

4 Q BY MS. LaROSE: Mr. Needham, I think we have given
5 you the power theoretically, to scroll through this
6 document yourself. Can you test that and see if you are
7 capable of doing that, using the device you are
8 connecting with?

9 While you are doing that, what I am hoping you can
10 confirm for me is that these are the returns for the
11 third quarter of 2017 through the first quarter of 2019,
12 for Needham, and can you make sure -- check to see if
13 Jered Nielsen, or Bill Bouchard or Tim Hamann are in any
14 of them? I don't believe they are, but I would like you
15 to confirm that for us, please.

16 A Well, the control on this sender is real slow and
17 glitchy, so it may take a little bit.

18 Q That's okay.

19 JUDGE STECKLER: Ms. LaRose, you said Jered
20 Nielson, Bill Bouchard, or who else were you looking for
21 in those documents?

22 MS. LaROSE: Tim Hamann.

23 JUDGE STECKLER: Thank you.

24 [Long pause]

25 THE WITNESS: No, I do not see them.

1 Q BY MS. LaROSE: Okay, and can you also confirm,
2 please, that Ambre is not on there for the first quarter
3 of 2019?

4 A Yeah, I did not -- let me double-check.
5 Yeah, she is not on there for that first quarter.

6 Q Okay.

7 MS. LaROSE: Your Honor, I would move for the
8 admission of Union's Exhibit 32.

9 MR. WILLIAMS: No objection.

10 MR. NIEW: Judge, we would just object to the
11 relevance.

12 MS. LaROSE: And they --

13 JUDGE STECKLER: Go ahead, Ms. LaRose?

14 MS. LaROSE: And they were not employees of the
15 Company in any of these periods where they would have
16 been listed, and *[Voice transmission garbled]* whether
17 they were voters in the election of July 2019.

18 JUDGE STECKLER: Objection overruled.

19 Union's Exhibit 32 is admitted.

20 **(Union's Exhibit 32, received into evidence.)**

21 THE COURT REPORTER: Judge, I am not sure how late
22 you would like to go, but I could use a break.

23 JUDGE STECKLER: Okay, Ms. LaRose, can you stop for
24 about ten minutes?

25 MS. LaROSE: Yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Okay, let's go off the record for
2 ten minutes.

3 [Off the record]

4 THE COURT REPORTER: We are on the record.

5 JUDGE STECKLER: Thank you, Mr. Molinaro.

6 Ms. LaRose?

7 MS. LaROSE: Thank you, Your Honor.

8 Q BY MS. LaROSE: Mr. Needham, I am showing you
9 Union's Exhibit 41, which are the W-2's of K & K for
10 2018.

11 **(Union's Exhibit 41, marked for identification.)**

12 Q BY MS. LaROSE: Can you please confirm that Amber,
13 Bill Bouchard, and Jered got W-2's from K & K for that
14 year?

15 A Can you scroll down a little bit?

16 Yes, them three are there.

17 Q Okay, thank you.

18 MS. LaROSE: I am going to move 41, Your Honor,
19 which are the K & K W-2's.

20 MR. NIEW: No objection.

21 MR. WILLIAMS: No objection.

22 JUDGE STECKLER: Union's Exhibit 41 is admitted.

23 MS. LaROSE: Thank you.

24 **(Union's Exhibit 41, received into evidence.)**

25 MS. LaROSE: Okay, Jim, if you could now pull up

1 Exhibit 33?

2 Q BY MS. LaROSE: Mr. Needham, I am going to have Jim
3 just scroll through these very quickly, and if you know
4 the answer already off the top of your head, then we
5 don't even to review the document, because this is
6 already in the record. Again, this is Union's Exhibit
7 33.

8 Bill Bouchard and Jered Nielsen did not get W-2's
9 from Needham for 2018; is that correct?

10 A I don't believe so, but we would need to verify
11 through the records.

12 Q Okay. Well, these are all of the W-2's for
13 Needham.

14 MS. LaROSE: Counsel, may I make a proposition
15 here, instead of making this witness sit here and look
16 through all of these 69 documents, and with Your Honor's
17 okay, I propose to have the witness just look at these
18 off the record and then, even after he has testified,
19 and either come back and give us an answer, or just give
20 us an answer through Counsel in the form of a
21 stipulation.

22 JUDGE STECKLER: Okay, that would be fine. We
23 could take it up first thing in the morning.

24 MS. LaROSE: Okay.

25 Q BY MS. LaROSE: You have indicated, Mr. Needham,

1 that employees are still filling out K & K timecards;
2 that's right, right?

3 A Yes.

4 Q Okay.

5 MS. LaROSE: Jim, could you please pull up Exhibit
6 77?

7 **(Union's Exhibit 77, marked for identification.)**

8 Q BY MS. LaROSE: This appears to be a K & K Repair
9 and Contracting bill for healthcare coverage from
10 Wellmark, for the period March 2019. These were just
11 produced to us.

12 MS. LaROSE: Can you scroll down to the end,
13 please, Jim?

14 Thank you.

15 Q BY MS. LaROSE: And this goes through at least
16 September -- the period of September 2019. The billing
17 period is October 2019.

18 Am I correct in saying that K & K paid healthcare
19 coverage on Bill Bouchard and Jered Nielsen through
20 October 2019?

21 A Yes, that is correct. That was the end of our
22 annual renewal for K & K. According to our health
23 insurance provider, there was not a good way to cancel
24 that policy that --

25 MS. LaROSE: Your Honor, I would move to strike.

1 Q BY MS. LaROSE: Please just answer the question,
2 because I don't want any hearsay answers. Your Counsel
3 can deal with that tomorrow, Mr. Needham.

4 MS. LaROSE: I am going to move for the admission
5 of Union's Exhibit 77, Your Honor.

6 JUDGE STECKLER: Objections?

7 MR. NIEW: No objections, Your Honor.

8 MR. WILLIAMS: No objections.

9 JUDGE STECKLER: Union's Exhibit 77 is admitted.

10 **(Union's Exhibit 77, received into evidence.)**

11 Q BY MS. LaROSE: Union 78 were documents produced to
12 us yesterday.

13 **(Union's Exhibit 78, marked for identification.)**

14 Q BY MS. LaROSE: These are apparently payments for
15 the worker's compensation premiums for K & K, and it
16 appears that --

17 MS. LaROSE: Jim, could you scroll down to the very
18 end...

19 Q BY MS. LaROSE: This is for the period that starts
20 April 2019 -- so it appears to cover the period of April
21 of 2019 through March or April of 2020.

22 So it looks like K & K obtained a year, as a policy
23 -- you have a policy in place for worker's compensation
24 purposes, through at least March or April of 2020; is
25 that right?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A That is what the document says, yes.

2 MS. LaROSE: Okay. I am going to move for the
3 admission of Union's Exhibit 78, Your Honor.

4 MR. WILLIAMS: No objection.

5 MR. NIEW: No objection.

6 JUDGE STECKLER: Union's Exhibit 78 is admitted.

7 **(Union's Exhibit 73, received into evidence.)**

8 MS. LaROSE: Thank you.

9 Your Honor, we have admitted the W-2's and the
10 1099's for the period preceding the election. Your
11 Honor, I would like to admit those for the period after
12 the election, and I have marked those -- I shouldn't say
13 I have marked them, but I have saved them as Exhibit 79
14 and 80, and they are uploaded.

15 **(Union's Exhibits 79, marked for identification.)**

16 MS. LaROSE: I would like to move for the admission
17 of those, also, for the same reason that I do not see a
18 lot of "utility enforcing" that was identified.

19 JUDGE STECKLER: Mr. Niew, have you seen this
20 document recently?

21 MR. NIEW: I may have, but I am not sure. I would
22 like to see it.

23 MS. LaROSE: Sure. Jim, could you put 79 on the
24 screen?

25 *[Long pause]*

1 MS. LaROSE: I'm sorry, 79 is in.

2 JUDGE STECKLER: Is it?

3 MR. NIEW: You can go a little quicker, if you
4 want.

5 JUDGE STECKLER: I don't recall admitting 79, but
6 just in case, is there any objection?

7 MR. WILLIAMS: No objection.

8 MR. NIEW: No objection.

9 JUDGE STECKLER: Okay, Union's Exhibit 79 is
10 admitted.

11 **(Union's Exhibit 79, received into evidence.)**

12 MS. LaROSE: Your Honor, I have that Union's
13 Exhibit 80 is also admitted. Am I mistaken about that?

14 JUDGE STECKLER: Dave, you are better able to --

15 THE COURT REPORTER: Union's Exhibit 80 is in.

16 JUDGE STECKLER: Okay.

17 Q BY MS. LaROSE: Mr. Needham, for the period after
18 the election, the Company produced Amber Nielsen's
19 payroll records, and in every payroll record, except
20 for, I think, four instances, she is either doing shop
21 work or she is receiving COVID pay. In other words,
22 from July 2019 through the present.

23 Does that sound right to you, based on what you
24 know about her work?

25 A Yes, I believe so with her current situation, her

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 current work-type position, yes.

2 Q Okay, thank you.

3 JUDGE STECKLER: I --

4 MS. LaROSE: Sorry, go ahead, Your Honor.

5 JUDGE STECKLER: No, go ahead. I will ask in a few
6 minutes.

7 MS. LaROSE: Okay.

8 Q BY MS. LaROSE: And then, Bill Bouchard, for the
9 period following the election through the present, he is
10 always doing shop work according to the payroll records,
11 right?

12 A Yes, I believe so.

13 Q And it is always designated as "Construction -
14 Yard," correct?

15 A I -- yes, I believe so, but I would have to double-
16 check the record.

17 Q Okay. Are Richard Needham's timecards that were
18 produced to us for the period following the election, to
19 the present, his machine is constantly identified as his
20 dump truck, meaning he was doing -- he was operating --
21 strike that.

22 His machine on his timecards is consistently
23 represented to be his dump truck for the period of July
24 of 2019 to the present, correct?

25 A I would not say that is accurate, no.

1 Q Okay. Do you have a rough idea of how many times
2 that a machine other than 47 is indicated in those
3 timecards?

4 A I would say somewhere between 35 and 60.

5 Q All right. And you mean instances of him operating
6 something other than a dump truck; is that right?

7 A Yes, him working on a job as an operator, yes.

8 Q Okay. Okay. Jered Nielsen, his timecards indicate
9 that he, from the period of July of 2019, the election,
10 to the present, he was either doing equipment repair or
11 shop work, and the site is always "Construction -
12 permanent yard." Is that right?

13 A Well, if you are talking from July of '19 to
14 current, we have since implemented two different job
15 numbers in our job numbers, where there is one job
16 number that is for in-shop work and one number that is
17 for off-site or on a project site work.

18 Q Okay, so you are not sure if it is -- if it always
19 says "Construction - permanent yard" in the Payroll
20 Record?

21 A That part of the Payroll Record would say that,
22 yes.

23 Q Okay. And as to the activity, and I think this is
24 regardless of whether it is a Payroll Record or the
25 timecard, his activity is either equipment repair or

1 shop work. Does that sound right to you?

2 A The majority of the time, yes.

3 Q Okay. When the Company laid off Brett Gripp --
4 strike that...

5 MS. LaROSE: One moment, please, Your Honor. I
6 think I am just about done.

7 [Long pause]

8 Q BY MS. LaROSE: Mr. Needham, what is -- I have just
9 a couple more questions.

10 What is a Daily Driver Ticket?

11 A A Daily Driver Ticket is something that our dump
12 truck drivers, they will fill out one per job, and then
13 they attach their -- that ticket to the material
14 tickets, as in a rock ticket or a sand ticket they get
15 from the quarry, and it is mainly for office
16 organization, and making sure that their rock tickets get
17 put to the right job number.

18 Q Is there a difference between a rock ticket and a
19 Daily Driver Sheet?

20 A Yes.

21 Q What is the difference between them?

22 A The Daily Driver Ticket is a Needham Excavating
23 card, and I believe the majority of them are still blue.
24 I don't believe we have any other colors of those. And
25 then, the rock ticket or sand ticket is a weight ticket

1 that we get from the quarry that is printed out and
2 handed to the driver after each load, to show how much -
3 - the tonnage involved, the material on the truck.

4 Q The material ticket is completed by the quarry?

5 A That is correct.

6 Q And then, the Daily Driver form is completed by the
7 driver?

8 A Correct.

9 Q Okay, and, I don't know, I speculated about the
10 reason why these documents exist, because I am honestly
11 not doing their job, but is part of that just to be able
12 to confirm -- I don't know, maybe to prevent the truck
13 driver from taking the material and dropping it at drops
14 that are not even Needham's, or part of it. Is it a way
15 to confirm that the material that you bought is actually
16 what you got?

17 A The issue that we run into is some weeks, depending
18 on the job and what kind of job we are doing, we may end
19 up with 400 to 1,000 or maybe 50 rock tickets for the
20 week, depending on what kind of project is going on at
21 that time, and if we are buying a lot of material from
22 the quarry, and without the driver tickets, they get
23 turned in in one pile, and then somebody has to sort
24 them out.

25 Q Okay.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MS. LaROSE: Your Honor, I think that the payroll
2 records and the timecards are going to serve -- are
3 going to have the same utility for the post-election
4 period. You know, they start their relevant, as they do
5 in the pre-election period, and I think that I would
6 like to admit those, and I am talking, of course, about
7 the ones that were produced for the post-election
8 timeframe that were given to us yesterday.

9 I have not marked those as exhibits. I haven't
10 segregated them, done nothing with them.

11 The person I would be giving the evidence through,
12 or admitting it through, would be Nick Needham. I
13 would, again, prefer not to keep him on the stand for
14 the rest of the evening going through those documents to
15 confirm that what I have marked as Exhibit X is what
16 they have produced to us.

17 JUDGE STECKLER: Why don't we do this?

18 After we -- we will go off the record shortly, give
19 you an opportunity to put them into exhibit form, send
20 to the parties whenever you get done. We will go back
21 on the record tomorrow at 9:00 Central, or 10:00
22 Eastern, depending on where you are living, and that
23 way, Respondent and General Counsel will have an
24 opportunity to review to see if they can stipulate them,
25 or whether we need to get Mr. Needham to continue with

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 that, before Respondent makes its -- examines him.

2 MS. LaROSE: That sounds great, Your Honor.

3 JUDGE STECKLER: Do you have additional questions,
4 Ms. LaRose?

5 MS. LaROSE: I do not, Your Honor.

6 JUDGE STECKLER: I have a couple questions, Mr.
7 Needham. I am sorry to keep you so late.

8 What was your role with K & K?

9 THE WITNESS: I did not have a role with K & K.

10 JUDGE STECKLER: Who did -- are you familiar with
11 the management set-up at K & K?

12 THE WITNESS: Yeah, I guess -- let me -- can I
13 rephrase that?

14 JUDGE STECKLER: Please.

15 THE WITNESS: I do not do any sort of scheduling.
16 I will call them if somebody calls me and say that they
17 have a machine down, or I do talk to them about, "Hey,
18 my truck needs a service," and then they get it fit in,
19 when it fits.

20 JUDGE STECKLER: Okay, so who is the boss over at
21 that facility?

22 THE WITNESS: Curt McKinley is -- between Curt
23 McKinley and my father, Joe Needham, are kind of doing
24 all of the scheduling there.

25 JUDGE STECKLER: Okay, so if they are doing the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 scheduling, are they also doing things like making sure
2 that employees are working, doing discipline, if
3 necessary, those types of work, that type of work?

4 THE WITNESS: They would if they had to, but that
5 group of -- that crew of people that work in the back
6 for NEI now are pretty reliable employees.

7 JUDGE STECKLER: Okay. So we will pick up tomorrow
8 at 9:00 Central, 10:00 Eastern.

9 Respondent will have an opportunity to question
10 them after Ms. LaRose finishes with the post-election
11 documents that she would like to review this evening.

12 Anything else before we go off the record?

13 MS. LaROSE: Your Honor, I am wondering if it is
14 possible for us to start at 8:00 Central, tomorrow, if
15 anybody has a thought on that?

16 JUDGE STECKLER: I could possibly do 8:30. I can't
17 be here before that time.

18 MS. LaROSE: Okay.

19 Any thoughts?

20 MR. WRIGHT: That would be fine with us, for
21 Respondent, Your Honor.

22 MR. WILLIAMS: That is fine with General Counsel.

23 So that would be 8:30 Central Standard Time, 9:30
24 Eastern, correct?

25 JUDGE STECKLER: That is correct, Mr. Williams.

1 Mr. Molinaro, can you make it?

2 THE COURT REPORTER: Yes.

3 JUDGE STECKLER: Since you are the most important
4 person here.

5 Anything else before we go off the record?

6 MR. NIEW: Yes. This is Stan.

7 I would like to ask Mr. Williams if he can start
8 out with Curt tomorrow, so we can have him here?

9 MR. WILLIAMS: I will.

10 JUDGE STECKLER: Okay, so after Ms. LaRose
11 finishes, and then, Mr. Niew -- so Curt McKinley is
12 next; is that correct?

13 MR. WILLIAMS: Yes, that's correct.

14 JUDGE STECKLER: Anything else before we go off the
15 record for the evening?

16 MR. WILLIAMS: No, Your Honor.

17 MR. NIEW: Nothing from Respondent.

18 JUDGE STECKLER: In that case, we will go off the
19 record until 8:30 tomorrow morning, Central, 9:30
20 Eastern.

21 Thank you for your time. Have a good evening.

22 MR. WILLIAMS: Thank you, Your Honor.

23 ***[Whereupon, the hearing was adjourned at 5:53 p.m. to***
24 ***reconvene on April 23, 2021 at 8:30 Central.]***

25

CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), in the matter of **NEEDHAM EXCAVATING, INC. (Respondent)** and **INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO, (Charging Party)**, Case No. 25-CA-239166 et al, on April 22, 2021, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, the hearing, that the exhibits (if any) are complete and no exhibits received in evidence or in the rejected exhibit files are missing.



David Molinaro, Official Reporter

ARS REPORTING LLC

22052 West 66th Street, Suite 314
Shawnee, Kansas 66226
Phone: (913) 422-5198

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case Nos: 25-CA-239166, 25-CA-244670, 25-CA-245763 &
25-RC-243735

NEEDHAM EXCAVATING, INC.,

Respondent,

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL
150, AFL-CIO,

Charging Party.

Place: Video Conference
Date: April 23, 2021
Pages: 298 through 525
Volume: 2 of 4

OFFICIAL REPORTERS

ARS REPORTING
22052 West 66th Street, Suite 314
Shawnee, Kansas 66226
(913) 422-5198

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25

In the Matter of:

NEEDHAM EXCAVATING, INC.,

Respondent,

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150, AFL-CIO,

Charging Party.

Case 25-CA-239166

Nos. 25-CA-244670

25-CA-245763

25-RC-243735

The above-titled matter came on for further hearing via video conference, pursuant to adjournment, before **THE HONORABLE SHARON L. STECKLER, Administrative Law Judge**, on Friday, the 23rd of April, 2021, at 8:35 a.m., Central.

A P P E A R A N C E S

On Behalf of the General Counsel:

RAIFAEEL WILLIAMS, ESQ.
National Labor Relations Board - Region 25
Minton-Capehart Federal Building
575 North Pennsylvania Street, Room 238
Indianapolis, Indiana 46204
Phone: (317) 991-7630
Fax: (317) 226-5103
E-mail: raifael.williams@nllrb.gov

On Behalf of the Respondent:

STANLEY NIEW, ESQ.
JEFFREY WRIGHT, ESQ.
Law Offices of Stanley E. Niew, P.C.
1000 Jorie Boulevard, Suite 206
Oak Brook, Illinois 60523
Phone: (630) 586-0110
Fax: (630) 586-0120
E-mail: sniew@senlaw.net
jwright@pappaswright.com

ARS REPORTING LLC

22052 West 66th Street, Suite 314
Shawnee, Kansas 66226
Phone: (913) 422-5198

A P P E A R A N C E S

(Continued)

On Behalf of the Charging Party:

ELIZABETH A. LaROSE, ESQ.

JAMES CONNOLLY, ESQ.

International Union of Operating Engineers,

Local 150, AFL-CIO, Local 150 Legal Department

6140 Joliet Road

Countryside, Illinois 60525

Phone: (708) 579-6633

Fax: (708) 588-1647

E-mail: elarose@local150.org

Courtroom Deputy:

SONJA SPIELBERG

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>V/D</u>	<u>COURT</u>
NICK NEEDHAM	309	310 320	322 326		319	
CURT McKINLEY	330 344	348		354		352
ADAM VANOPDORP	356 425	447	488 490	499	431	
CHAD HAVILL	502 512	516				

1		<u>E X H I B I T S</u>		
2				
3	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>	
4				
5	GENERAL COUNSEL			
6	3	394		395
7	4	394		395
8	5	401		405
9	6	402	Not Offered	
10	7	409		410
11	8(a)	410		412
12	8(b)	411		412
13				
14	CHARGING PARTY/UNION			
15	3	425		426
16	5	426		428
17	27	428		429
18	33	304	Not Offered	
19	42	508		509
20	81	305		305
21	82	305		305
22	83	306	Not Offered	
23				
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Continued)

E X H I B I T S

EXHIBITS **FOR IDENTIFICATION** **IN EVIDENCE**

RESPONDENT/EMPLOYER

1	349	350
2	314	Not Offered
3	313	314
4	477	Not Offered
16	318	320

P R O C E E D I N G S

[Time Noted: 8:35 a.m.]

1 THE COURT REPORTER: We are on.

2 THE HONORABLE JUDGE SHARON STECKLER: Good morning.
3 Back on the record.

4 Mr. Williams, you were discussing off the record
5 the Formal Papers in Exhibit GC-1?

6 MR. WILLIAMS: Yes, I was letting the parties know
7 that the Formal Papers have been revised and uploaded
8 into SharePoint for the parties' review. After they
9 review it, hopefully everything is now okay.

10 So, I would offer General Counsel's Exhibit 1, the
11 Formal Papers, into evidence.

12 JUDGE STECKLER: Thank you.

13 So the parties will take an opportunity, hopefully,
14 to look at those during a break, and then we can see if
15 the parties are ready to submit those for the exhibit
16 file.

17 Any other preliminary matters since yesterday,
18 before we go back to Mr. Needham?

19 MR. NIEW: No other than when is the Union and
20 General Counsel going to recall Joe Needham, so we can
21 get him here. He is about an hour away. Is that today,
22 or is that going to be Monday?

23 MR. WILLIAMS: Probably Monday, for me, as General

1 Counsel.

2 MS. LaROSE: Same.

3 JUDGE STECKLER: Okay. If there are no other
4 matters, then Mr. Needham, please remember that you are
5 under oath. Have you discussed your testimony with
6 anybody since yesterday morning?

7 THE WITNESS: No, I have not.

8 JUDGE STECKLER: Thank you.

9 There was one issue, Union 33, and Mr. Bouchard's
10 W-2's. Ms. LaRose, can you please refresh our memory
11 about that?

12 MS. LaROSE: Your Honor, I think we were looking
13 for an agreement that 33 represented all of the W-2's
14 and 1099's from the 2019 subpoena response by the
15 Company, and I do not recall what the -- what the
16 outstanding stipulation was with respect to Mr.
17 Bouchard's timecards. That may have been with respect
18 to Union's Exhibit 47, which was just a selection of
19 timecards with respect to Mr. Bouchard and Jered
20 Nielsen.

21 JUDGE STECKLER: Okay. I had written a note by
22 Union's Exhibit 33 to hold until this morning.

23 Okay, has Respondent had an opportunity to assess
24 whether Union's Exhibit 33 includes any W-2's for Mr.
25 Bouchard?

1 MR. NIEW: For some reason, I don't have 33 in the
2 book. Sorry.

3 MR. WRIGHT: It was probably too large to print it.

4 JUDGE STECKLER: Can somebody put it up on the
5 screen, please?

6 MS. LaROSE: Yes, we are doing that, Your Honor.

7 JUDGE STECKLER: So these are the 2018's?

8 MS. LaROSE: Yes, Your Honor, and it looks like we
9 have 2017 in there, as well.

10 JUDGE STECKLER: Okay, is Respondent prepared to
11 stipulate that Mr. Bouchard has no W-2's, and -- for
12 2018 and 2017?

13 MR. NIEW: I will stipulate to 2018, but I don't
14 see any relevance to 2017.

15 JUDGE STECKLER: Well, the document will speak for
16 itself then.

17 Mr. Williams, any objections to admitting Union's
18 Exhibit 33?

19 MR. WILLIAMS: No objection, Your Honor.

20 JUDGE STECKLER: Union's Exhibit 33 is admitted.

21 **(Union's Exhibit 33, received into evidence.)**

22 MS. LaROSE: Thank you, Your Honor.

23 We were also looking for stipulations relative to
24 Union's Exhibit 81 and 82, Your Honor.

25 **(Union's Exhibits 81 and 82, marked for identification.)**

1 MS. LaROSE: Union's Exhibit 81 is all of the
2 payroll records the Company produced in response to the
3 latest subpoena. Union's Exhibit 82 is the timecards
4 the Company produced in response to the latest subpoena.

5 I note for the benefit of Counsel is that this was
6 Needham's Item 27.

7 JUDGE STECKLER: And that is what you e-mailed,
8 like late yesterday?

9 MS. LaROSE: Yes, Your Honor. I e-mailed Counsel
10 about it yesterday.

11 MR. NIEW: And, Ms. Rose, if you represent that is
12 exactly what we produced, then I have no objection.

13 MS. LaROSE: It is.

14 JUDGE STECKLER: Mr. Williams?

15 MR. WILLIAMS: I have no objection, Your Honor.

16 JUDGE STECKLER: Union's Exhibit 81 and 82 are
17 admitted.

18 **(Union's Exhibits 81 and 82, received into evidence.)**

19 MS. LaROSE: Thank you, Your Honor.

20 And then I have not uploaded it yet, but I will,
21 but I would like to introduce the subpoena itself, again
22 for the same reasons as I asked to admit the 2019
23 subpoena, so that it is is clear what the Company was
24 producing in response to, and I just want to know if
25 there is going to be any objection to that, and then

1 when I get it uploaded, I will just ask you to admit it,
2 please, provided there's no objections.

3 MR. NIEW: We won't have any objection.

4 MR. WILLIAMS: No objections, Your Honor.

5 JUDGE STECKLER: Do you have a tentative number,
6 Ms. LaRose?

7 MS. LaROSE: It will be Union's Exhibit 83, Your
8 Honor. I apologize, 83.

9 **(Union's Exhibit 83, marked for identification.)**

10 JUDGE STECKLER: Okay, so Union's Exhibit 83 will
11 be uploaded as the subpoena from this year?

12 MS. LaROSE: Yes, and just for the purposes of the
13 record, that will be -- that would be the Needham
14 subpoena.

15 JUDGE STECKLER: Duces tecum?

16 MS. LaROSE: Yes.

17 JUDGE STECKLER: Okay, any additional items, Ms.
18 LaRose?

19 MS. LaROSE: No, Your Honor.

20 JUDGE STECKLER: Anything else from Respondent
21 before we proceed?

22 MR. NIEW: Nothing, Your Honor.

23 JUDGE STECKLER: And General Counsel?

24 MR. WILLIAMS: No, Your Honor.

25 JUDGE STECKLER: Okay, we are -- Ms. LaRose, you

1 were finishing up your questioning with Mr. Nick
2 Needham.

3 MS. LaROSE: Yes, Your Honor.

4 (Whereupon,

5 **NICK NEEDHAM**

6 having been previously sworn/affirmed, was recalled as a
7 witness herein, and was further examined and testified via
8 video-conference, as follows:)

9 CONTINUED DIRECT EXAMINATION

10 Q BY MS. LaROSE: Mr. Needham, we did not get any --
11 I don't think we got any rock tickets in response to the
12 Needham subpoena. Do you know why that is?

13 A No, I do not.

14 Q I mean -- well, let me just read the subpoena
15 question to you, and then maybe you can...

16 "All daily driver or rock tickets and/or receipts
17 from materials completed by Amber Nielsen, Rick Needham,
18 Clint McKinley, and Ken McAdoo for the last 24 months."

19 Do those documents exist?

20 A The -- I believe that you have all of the daily
21 driver tickets for those four individuals. The rock
22 tickets are not in the -- individualized to a certain
23 person. They are charged off to a job. When it comes
24 to the rock tickets, that is something that comes from a
25 quarry that is directed toward a project and not an

1 individual, and there is no receipt of who the driver
2 was on those rock tickets.

3 Q Okay. So -- so there may be rock tickets for each
4 of them, but you would have no way of connecting it back
5 to them, is what you are saying?

6 A That is correct.

7 Q Okay. The Company, and by "Company," I mean
8 Needham, Needham has been invoiced by County Line
9 previously, is that right?

10 A Yes.

11 Q Okay. And it looks like occasionally that is for
12 trucking work; is that right?

13 A Yeah, I believe the majority of the invoices were
14 for trucking.

15 Q Okay.

16 MS. LaROSE: Okay, I think, Your Honor, those are
17 all of my questions for Mr. Needham.

18 JUDGE STECKLER: Mr. Niew or Mr. Pappas?

19 MR. WRIGHT: Yes, Judge, Jeff Wright here.

20 CROSS EXAMINATION

21 Q BY MR. WRIGHT: Just a few follow-up questions,
22 please, Nick.

23 Nick, I would like you to go back to your testimony
24 and General Counsel's questions. You testified
25 regarding a discussion you had with, I believe, Adam

1 VanOpDorp on or about March 29th of 2019. I think you
2 said that was at the Coca Cola plant, and it was after
3 Adam and Curt had gotten into an argument at that point.
4 Do you remember that testimony?

5 A Yes.

6 Q You -- if I recall correctly, my notes have that
7 Adam voiced some concerns at that one-on-one in-person
8 conversation you had with him, but I don't think you
9 talked about what concerns he raised during that day.
10 You talked about the April 11th meeting.

11 Can you explain what was said during the March
12 29th, 2019 discussion between you and Adam?

13 A There was a few things that were brought up. One
14 of the comments that he made, he heard from Jeff
15 Dunleavy in the fall or early winter of 2018. He -- we
16 had an internal discussion in management with 18th
17 Street, and Jeff happened to be a part of that meeting
18 where we were talking about basically get rid of the
19 entire crew that did the sanitary sewer work at 18th
20 Street for that large mistake, and he was upset that he
21 was -- that that was even brought up.

22 He brought up issues with health insurance which
23 ended up being the same discussions we had at the April
24 11th meeting in the office.

25 He also brought up his concern that we were -- that

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 he was putting black dirt down on a project, basically
2 thinking that he was too good to do finish grading
3 around a building.

4 And then, we also talked about just communication
5 throughout the business, in general.

6 JUDGE STECKLER: Just one moment, please.

7 Can we go off the record?

8 *[Off the record]*

9 JUDGE STECKLER: Let's make sure we are on the
10 record.

11 Okay, we are back on the record.

12 I am sorry for the interruption, Mr. Needham.

13 Please go ahead.

14 Q BY MR. WRIGHT: Nick, I think where you left off,
15 you said Adam also raised issues or concerns about
16 communications within the company. Could you elaborate
17 on that? What are you referring to there?

18 A Just -- between communicating between what needed
19 to happen on projects from me telling Curt to Curt
20 telling the guys, and just basically communication
21 issues on who they might be getting for help one day or
22 what exactly their task or what our expectations of them
23 were for that day.

24 Q Okay. You testified about Adam running over some
25 ADA panels, I think in May of 2019 with the skid loader.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Do you recall that testimony?

2 A Yes.

3 Q Okay, and you said you received an e-mail from
4 someone about the damage that was done to those ADA
5 panels. Do you remember who that was?

6 A Yeah, that was Troy Mertens from Streb Construction
7 or Streb Concrete.

8 Q Okay.

9 MR. WRIGHT: Judge, I would like to request
10 permission to share my screen.

11 JUDGE STECKLER: Please.

12 MR. WRIGHT: Okay. Can you see what is on that
13 screen?

14 Is that working?

15 THE WITNESS: Yes.

16 Q BY MR. WRIGHT: All right, Nick, I am going to show
17 you what has been marked as Respondent's Exhibit 3.

18 **(Respondent's Exhibit 3, marked for identification.)**

19 Q BY MR. WRIGHT: Let me scroll through it.

20 *[Long pause]*

21 Q Can you tell me what we are looking at here?

22 A Yah, that is an e-mail that I received from Troy
23 stating that somebody ran over the panels, and there was
24 a couple pictures at the bottom showing the ADA panels
25 completely up on a finished concrete sidewalk, that come

1 to find out, I would assume, that he blatantly ran them
2 over being up on concrete, and most of the stuff that we
3 would use putting black dirt down, we shouldn't have
4 even been on top of the concrete.

5 Q Who did you learn that from that it was Adam?

6 A My brother, Dan Needham.

7 Q Was Dan on -- on the job?

8 A Yes.

9 Q Okay. And this -- and you received the e-mail from
10 Troy, correct?

11 A Yes, that's correct.

12 MR. WRIGHT: Your Honor, I would move to admit
13 Respondent's Exhibit 3.

14 JUDGE STECKLER: Objections?

15 MR. WILLIAMS: No objections.

16 MS. LaROSE: No objections.

17 JUDGE STECKLER: All right, Respondent's Exhibit 3
18 is admitted.

19 **(Respondent's Exhibit 3, received into evidence.)**

20 Q BY MR. WRIGHT: Nick, I am going to show you now
21 what -- some photos that are included in Respondent's
22 Exhibit 2.

23 **(Respondent's Exhibit 2, marked for identification.)**

24 MR. WRIGHT: For the parties, over the weekend, I
25 intend to try to somehow make these 2(a), 2(b), 2(c), as

1 some of these pictures are from -- we will have to
2 introduce some of these individuals. I did not think
3 ahead on that.

4 Q BY MR. WRIGHT: But show you what, as part of --
5 oops, part of the same thing -- part of Respondent's
6 Exhibit 2, are these the same photos that were -- this
7 one and this next one, are these the same photos that
8 were included in that Troy Mertens e-mail that we just
9 looked at?

10 A Yes, they are.

11 Q These are just a higher quality; is that fair?

12 A Yes.

13 Q Okay. Did you -- did you respond to Troy's e-mail,
14 to your recollection?

15 A I -- I believe I did, to the point of, "Do you want
16 us to mail you a check or issue you a change order for
17 the damage?" Something in regards to figuring out how I
18 was going to get him paid for that damage.

19 Q Okay. Nick, I want to go back to -- you were
20 questioned yesterday by Union Counsel regarding Union's
21 Exhibit 47, which was admitted into evidence, I believe.
22 I am now showing you that, the first page of it.

23 My notes say that you started to comment regarding
24 the handwriting between Jered and Amber, or something
25 along those lines, but Your Honor did not allow you to

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 finish your response. Do you recall what you were going
2 to indicate or what you were going to clarify as it
3 pertains to Union's Exhibit 47?

4 A Yes. I just wanted to clarify that Amber is in
5 charge of reviewing Jered and Bill's timecards, and if
6 she finds mistakes on those, she may scratch out and
7 say, "This was supposed to get charged to Needham," and
8 then instead of taking that back to the guys, she would
9 fill out an appropriate timecard for -- to get the
10 payroll processed.

11 Q Okay. Another exhibit you reviewed with Union
12 Counsel was part of Respondent's Exhibit 11, and my
13 notes say that it was the one that had the old stamp of
14 Exhibit 14, and this had to do with, it looks like, Rick
15 Needham payroll. It looks like January of, what is it,
16 '19 through July 18th of 2019.

17 Now, my notes say that you were asked during your
18 examination that you were surprised that Rick had fewer
19 than thirty days for the 12-month time period before the
20 election, and you started to respond or go beyond a
21 "yes/no" answer, and were not allowed to finish.

22 Do you recall if there is anything that you wanted
23 to clarify about this exhibit?

24 A Yeah, a couple things.

25 The first thing is that payroll record only goes

1 back to the beginning of 2019. That is not a full 12-
2 month window, as it was presented to me, and then also,
3 it would not surprise me as January, February, March are
4 typical wintertime months for us, and when Rick does
5 operate equipment is on a dirt crew, either running a
6 scraper, a roller, or a tractor with a disk. And then,
7 also in 2019, that was also a very wet spring, which --
8 with a bunch of rain and wet conditions, the dirt crew
9 does not get very many hours or days worth of work in,
10 as wet as it was in the spring of 2019.

11 Q Okay. Nick, as the Company's observer, you
12 observed Joe Needham's testimony yesterday, correct?

13 A That is correct.

14 Q Okay, Nick, now do you recall his general testimony
15 regard getting K & K and Needham, the two companies,
16 combined, and I believe he referenced, you know, his low
17 business practices generally, slow back down generally
18 and he didn't get it done as soon as he would have
19 otherwise liked. Do you recall that general testimony?

20 A Yes.

21 Q Were you involved, or did you have any role in
22 trying to get K & K and NEI combined?

23 A Yes, I was.

24 Q And what was that? What role was that?

25 A So, in -- prior to 2018, our insurance carrier was

1 through West Bend Insurance, and the on-the-road
2 mechanics was kind of an issue for them prior to those
3 years, and then -- then in January 1st of 2018, Needham
4 Excavating had switched insurance agents and carriers.
5 At the beginning -- like I said, at the beginning,
6 January 1st, 2018, and after we did that switchover, I
7 started talking to our insurance agent early of 2018, at
8 looking at if there were any issues on the insurance
9 side of combining K & K and NEI as one company.

10 We had some verbal communications early in 2018
11 between me and our insurance agent, and one of our
12 concerns that we had was combining the two companies.
13 We would have to -- NEI would have to incorporate K &
14 K's workman's comp ratings into Needham Excavating, so
15 they would combine and we kind of had some -- like I
16 said, we had some verbal communications early on, and
17 then I believe sometime in August of 2018, I sent Brad
18 an e-mail asking if he had got an updated number of
19 combining the two companies, and stating something to
20 the effect that we were looking at combining the
21 companies before the end of the year.

22 Q Okay, and I am going to show you what's been marked
23 as Respondent's Exhibit 16.

24 **(Respondent's Exhibit 16, marked for identification.)**

25 Q BY MR. WRIGHT: This was not included in

1 Respondent's original uploaded exhibits.

2 I would offer this once we have a foundation for
3 it, as a rebuttal exhibit.

4 But first, Nick, is this the e-mail that you sent
5 to Brad Hodapp. Who is Brad Hodapp?

6 A Brad Hodapp is our insurance agent, and that AW
7 Welt Company is now Relion, and they are still our
8 current insurance provider.

9 Q Okay.

10 MR. WRIGHT: Your Honor, I would offer Respondent's
11 Exhibit 16 as a rebuttal exhibit.

12 JUDGE STECKLER: Any objections?

13 MS. LaROSE: I would like to do some voir dire, if
14 I may, please, Your Honor.

15 JUDGE STECKLER: Go ahead, Ms. LaRose.

16 VOIR DIRE

17 Q BY MS. LaROSE: Mr. Needham, is this the first
18 written document that indicates that there was any
19 exchange over combining these companies for insurance
20 purposes?

21 A From my quick glancing through e-mails, I believe
22 it is. There could have been something earlier. Like I
23 said, there was a discussion that we had in early 2018
24 over phone calls with Brad.

25 MS. LaROSE: Okay, well, Your Honor, I am going --

1 I will argue the weight of these verbal exchanges
2 without calling the other party, and with that
3 understanding, no objection to the admission of this
4 document.

5 MR. WILLIAMS: No objection, Your Honor.

6 JUDGE STECKLER: Respondent's Exhibit 16 is
7 admitted.

8 **(Respondent's Exhibit 16, received into evidence.)**

9 JUDGE STECKLER: Mr. Needham, at the time you were
10 having these discussions, could you clarify to me what
11 your role was with K & K?

12 THE WITNESS: I guess my father had talked to me
13 about talking to the insurance and seeing what -- if we
14 could -- if there was any insurance implications into
15 combining the two companies.

16 JUDGE STECKLER: Were there any other implications
17 that you were thinking of at the time?

18 THE WITNESS: No, none at all.

19 Mr. Wright, you may continue.

20 MR. WRIGHT: Thank you, Your Honor.

21 CONTINUING CROSS EXAMINATION

22 Q BY MR. WRIGHT: Nick, the last clarification or
23 question I have was, and my notes are pretty poor on
24 this...

25 I believe Judge Steckler asked you, at one point, a

1 clarification about where the word "demo" was marked on,
2 I believe a timecard. Do you recall that?

3 A Yes.

4 Q I just want a clarification -- I think I may have
5 misheard it, but did "demo" refer to -- is that heavy
6 equipment operating in there when it says "demo" or not?

7 MS. LaROSE: Objection.

8 JUDGE STECKLER: What is the objection, Ms. LaRose?

9 MS. LaROSE: Your Honor asked what "demo" meant.
10 She didn't ask for elaboration on whether there was
11 equipment or not involved. We are going beyond the
12 scope now.

13 JUDGE STECKLER: Mr. Needham, let me clarify here.
14 What does demolition involve?

15 THE WITNESS: From our standpoint, as a company,
16 our demolition is with heavy equipment, tearing complete
17 structures down, whether it be a garage, a house, a farm
18 building, a commercial building, anything in regards to
19 that.

20 JUDGE STECKLER: Which heavy equipment is used?

21 THE WITNESS: Normally an excavator.

22 JUDGE STECKLER: Not a bulldozer?

23 THE WITNESS: On an actual demolition site, no. On
24 part of the clean-up side, yes.

25 JUDGE STECKLER: You don't use any explosives to do

1 so?

2 THE WITNESS: No.

3 JUDGE STECKLER: Okay, Ms. LaRose, do you have
4 further --

5 MR. WRIGHT: Your Honor, I have no further
6 questions. I will stop my ShareScreen, if that is okay.

7 MS. LaROSE: Your Honor, I did have additional
8 questions, with Your Honor's indulgence.

9 JUDGE STECKLER: Well, I was going to ask Mr.
10 Williams first.

11 MS. LaROSE: Oh, I'm sorry.

12 JUDGE STECKLER: Mr. Williams?

13 MR. WILLIAMS: Yes, I had a couple questions.
14 Mr. Wright, could you put up R-3?

15 MR. WRIGHT: Yeah. I can do it. You wanted
16 Respondent's Exhibit 3?

17 MR. WILLIAMS: Yes.

18 MR. WRIGHT: One moment.

19 Let me know if you want me to scroll down or
20 anything.

21 MR. WILLIAMS: Okay.

22 REDIRECT EXAMINATION

23 Q BY MR. WILLIAMS: So, Mr. Needham, with respect to
24 this e-mail that you received from Troy Mertens,
25 reporting to state that the panels on a particular

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 jobsite had been run over by Adam.

2 A Yes.

3 Q Which jobsite was that?

4 A Cubby Park in West Branch.

5 Q Okay, and West Branch is located where?

6 A Iowa.

7 Q And did you ever talk to Adam about this alleged
8 incident?

9 A I don't believe I did.

10 Q Did you?

11 A Did I?

12 Q Yes.

13 A Not to my recollection.

14 Q Do you know if Adam was ever disciplined because of
15 this incident?

16 A I -- not suspended from work disciplined, no.

17 Q Was he -- was he disciplined for this incident?

18 A No.

19 Q Okay.

20 JUDGE STECKLER: Mr. Needham, looking at the e-
21 mail, it doesn't identify who did the damage; is that
22 correct?

23 THE WITNESS: That is correct.

24 JUDGE STECKLER: So, how did you figure out it was
25 Adam?

1 THE WITNESS: I -- I --

2 JUDGE STECKLER: Or was that something your brother
3 told you?

4 THE WITNESS: That is something my brother told me.
5 I believe I sent a text message out asking who ran over
6 some ADA panels, and there was a response from him that
7 it was Adam.

8 JUDGE STECKLER: So, do you have a copy of that
9 text message?

10 THE WITNESS: I believe it's --

11 MR. WRIGHT: Judge, I have it as one of the
12 Respondent's exhibits.

13 JUDGE STECKLER: Okay. Do you have that exhibit
14 now, Mr. Wright, so that we can kind of --

15 MR. WRIGHT: Yeah.

16 JUDGE STECKLER: Okay.

17 MR. WRIGHT: Yeah. And this is another one, Your
18 Honor, where I will need to clean it up for ease of
19 reference to the parties, in terms of making it Exhibit
20 4(a), (b), and so forth, because these are different
21 texts from different people.

22 JUDGE STECKLER: Okay --

23 MR. WRIGHT: I will --

24 JUDGE STECKLER: -- in that case, we will need it
25 cleaned up before I can question Mr. Needham about that.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WRIGHT: Okay.

2 JUDGE STECKLER: Okay.

3 Mr. Williams, do you have further questions?

4 MR. WILLIAMS: So, Your Honor, do you plan to have
5 Nick recalled regarding his -- well, whatever the other
6 exhibit is, regarding his discussion with his brother
7 about Adam being involved with Nick with this?

8 JUDGE STECKLER: It is up to Respondent to enter it
9 during it direct.

10 Q BY MR. WILLIAMS: My question -- okay, then my
11 question is, what -- what discussion did you have with
12 your brother regarding this incident at this jobsite
13 where supposedly Adam was involved? How did that come
14 about?

15 A Well, I received an e-mail, and then I knew my
16 brother was working on that job during this timeframe,
17 so I -- as I said earlier, I sent him a text message to
18 the extent of, "I heard you ran over some ADA panels,"
19 and he just responded back that it was Adam.

20 Q Okay, so that's all you know about Adam supposedly
21 being involved with this incident because your brother,
22 Dan Needham, sent you that e-mail or --

23 A Yes, so Dan was lead man on that project --

24 Q Okay.

25 A -- that day.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WILLIAMS: I have no further questions, Your
2 Honor.

3 JUDGE STECKLER: So, let me make sure I am
4 understanding this before Ms. LaRose picks up.

5 Same topic; when the panels were out there, your
6 brother didn't tell you about this before you got this
7 e-mail from Troy Mertens.

8 THE WITNESS: That is correct. The e-mail is the
9 first I had heard of it.

10 JUDGE STECKLER: Okay, and did -- did you ever find
11 out what date that occurred on? Was it the day before,
12 two weeks before...

13 THE WITNESS: I -- I honestly don't know the date
14 of the damage.

15 JUDGE STECKLER: Okay, Ms. LaRose?

16 MS. LaROSE: Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 Q BY MS. LaROSE: Mr. Needham, you were asked some
19 questions about the reference to demolition. On a
20 demolition project, there is frequently handwork
21 involved, as well as heavy equipment work, right?

22 A Maybe on some select demo projects, as in if there
23 is a -- if we are demo-ing a portion of a building
24 instead of an entire building. If we are demo-ing an
25 entire building, there is no hand work involved until

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 the very end to clean up and maybe pick up some little
2 pieces of wood and stuff like that that are left laying
3 around.

4 Q Okay, but if I am understanding your testimony,
5 there is -- there is -- there is hand work on both.

6 A As in --

7 Q There is hand --

8 A There is a difference between labor cleaning up and
9 hand demolition.

10 Q Well --

11 A Cleaning up is not demolition.

12 Q Okay. But there is hand work involved in
13 demolition projects across the board, correct?

14 A As I said, I do not believe that clean-up is part
15 of -- is part of demolition. Someone would not put
16 "demo" on their timecard if they were cleaning stuff up.

17 Q Okay, so when an operator, for example, and I don't
18 do demolition for a living, so I may not be the best
19 person to ask you this question, but I am going to take
20 a stab at it anyways.

21 When an operator knocks down a wall of a building,
22 you folks just leave that wall there?

23 A No, the machine picks it up and puts it onto a
24 truck to haul it away.

25 Q And that is clean-up, right?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A No, that would -- that is part of the demolition
2 with the machine.

3 Q Okay, so is there anything in the Company's --
4 strike that.

5 So you are drawing a very straight line between,
6 you know, clean-up with a machine is demo. Clean-up by
7 hand is not demo. Have I got that right?

8 A No, I --

9 MR. NIEW: Objection. Misstates his testimony --

10 JUDGE STECKLER: He can clarify.

11 Mr. Needham?

12 THE WITNESS: There is a difference between -- if
13 you tear a wall down, tear a building down, it is in a
14 pile. That pile gets loaded onto a truck. That is all
15 done with a machine. That is all part of a demolition
16 project. Then, after all of that is done, depending on
17 -- the main thing is depending on the project and the
18 location of what is going back at that building of how
19 clean you actually need to get it. Some buildings,
20 there is zero labor involved on picking things up.

21 MS. LaROSE: Your Honor, I think that -- I think we
22 are done.

23 Thank you, Mr. Needham.

24 JUDGE STECKLER: Okay, Mr. Wright, any further
25 questions?

1 MR. WRIGHT: No, Your Honor.

2 JUDGE STECKLER: Mr. Needham, you are tentatively
3 excused from your witness duties for the day. I
4 understand you are still the observer. You might be
5 recalled at a later time, so, sir, please do not discuss
6 your testimony with anyone until after this hearing is
7 over.

8 We will go out for five minutes while General
9 Counsel gets his next witness.

10 Off the record.

11 *[Off the record]*

12 JUDGE STECKLER: Okay, back on the record, please.

13 General Counsel may call his next witness.

14 MR. WILLIAMS: At this time, General Counsel calls
15 Curt McKinley to the stand.

16 JUDGE STECKLER: Mr. McKinley, please raise your
17 right hand.

18 (Whereupon,

19 **CURTIS MCKINLEY**

20 having been sworn/affirmed, was called as a witness
21 herein, and was examined and testified via video-
22 conference, as follows:)

23 JUDGE STECKLER: Please state your name and spell
24 it for the record.

25 THE WITNESS: My name is Curtis McKinley; Curtis,

1 C-u-r-t-i-s, McKinley, M-c-K-i-n-l-e-y.

2 JUDGE STECKLER: Mr. McKinley, since yesterday
3 morning early, have you discussed this hearing with
4 anyone?

5 THE WITNESS: No, ma'am.

6 JUDGE STECKLER: Is there anyone in the room with
7 you?

8 THE WITNESS: No, ma'am.

9 JUDGE STECKLER: Is the door open or shut?

10 THE WITNESS: Shut.

11 JUDGE STECKLER: Okay.

12 Mr. Williams, you may begin your examination.

13 MR. WILLIAMS: Okay, thank you.

14 DIRECT EXAMINATION

15 Q BY MR. WILLIAMS: Mr. McKinley, by whom are you
16 currently employed?

17 A Needham Excavating.

18 Q And how long have you been employed there?

19 A I have been employed there since 1998.

20 Q And what is your current position?

21 A My current position is Manager.

22 Q Okay, how long have you held that position?

23 A Approximately two years.

24 Q And what is your duties -- what are your duties as
25 Manager?

1 A My duties as Manager is to assign guys to job,
2 assign -- do the timecards. I order material for
3 everybody on jobs.

4 Q Okay, when you say "do the timecards," what do you
5 mean "do the timecards?"

6 A I go over the time every week and look at
7 everybody's timecards to make sure that they have the
8 right cost codes, the right job number, the right hours.
9 I look at the guys' hours and compare them with other
10 people's -- other employees that are on the job, make
11 sure there are no big discrepancies on the job.

12 Q Okay. Did you hold any position prior to being a
13 manager?

14 A Yes, I operated equipment.

15 Q You operated what?

16 A I operated equipment also.

17 Q Okay, so were you considered a heavy equipment
18 operator?

19 A Yes, but I also did other things. I mean, I would
20 labor, I did whatever I needed to do.

21 Q Okay. Are you a shareholder with Needham
22 Excavating, Inc.?

23 A A shareholder? Is that what you said?

24 Q Yes. Do you have ownership in the Company?

25 A No, sir.

1 MR. WILLIAMS: At this time, Your Honor, General
2 Counsel requests permission to question this witness
3 under 611(c) of the Federal Rules of Evidence.

4 JUDGE STECKLER: So granted.

5 MR. WILLIAMS: Thank you.

6 Q BY MR. WILLIAMS: So, Mr. McKinley, are you
7 familiar with the International Union of Operating
8 Engineers, Local 150?

9 A Yes, sir.

10 Q And how are you familiar with that?

11 A I used to be an owner-operator for Local 150.

12 Q Okay. And isn't it true at one point, the
13 International Union of Operating Engineers Local 150
14 represented the heavy equipment operators employed by
15 Needham Excavating, Inc.?

16 A Yes, sir.

17 Q And isn't it true that at some point, the Union was
18 de-certified?

19 A Yes, sir.

20 Q Okay. And isn't it true at some point, the Union
21 attempted to either organize again, or re-organize some
22 of the employees of Needham Excavating, Inc.?

23 A Yes.

24 Q Okay. And did you become aware, at some point,
25 that the Union was attempting to again organize some of

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 the employees of Needham Excavating, Inc.?

2 A Yes.

3 Q And when did you become aware?

4 A I think the first time that I was aware that the
5 guys had anything to do with the Union again was when --
6 in April of '19 when Adam came into our shop and was
7 wearing a Local 150 sweatshirt.

8 Q Okay. And you -- can you describe this sweatshirt?

9 A It was a yellow sweatshirt with, I think, a Union
10 logo on it.

11 Q Okay, on the front or the back of the shirt?

12 A I think there was a small logo on the front and a
13 big logo on the back.

14 Q Okay, and who attended this meeting that you are
15 making reference to?

16 A Myself, Nick Needham, Joe Needham, Adam VanOpDorp,
17 Tracey, Aaron Hamilton; I do believe that is it.

18 Q Okay. And are you familiar with Brett Gripp?

19 A Yes, sir.

20 Q And who is Brett Gripp?

21 A He is a former employee of Needham Excavating.

22 Q Okay. And what was his position?

23 A He was a dump truck driver for us.

24 Q Okay. And do you know whether he was -- whether or
25 not he supported the organizing effort on behalf of

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 International Union of Operating Engineers Local 150?

2 A No, sir.

3 Q Now, isn't it true that Brett Gripp was laid off on
4 June 10th, 2019?

5 A Yes, sir.

6 Q And why was he laid off?

7 A Brett Gripp was laid off because we -- it was a wet
8 season that year, and we were busy, and then at the end
9 of that season, or at the end of that wet season, we got
10 caught up with work, and the -- and I didn't need all of
11 the dump truck drivers anymore, so Brett was the first
12 one to get laid off.

13 Q So he was laid off for the lack of work?

14 A Yes, sir.

15 Q More specifically, dump truck work?

16 A Yes. He lacked the skillset that limited him to
17 basically driving dump truck.

18 Q Now, isn't it true that between January 1st of 2017
19 and June 10th, 2019, Brett Gripp was the only employee
20 of Needham to be laid off during that time period?

21 A Yes, sir.

22 Q And isn't it true that since June 10th, 2019,
23 Needham Excavating, Inc. has hired at least two drivers
24 since that time?

25 A We have hired a lowboy driver and a shop girl that

1 can drive dump truck also.

2 Q Okay. Do you remember the names of those two
3 employees?

4 A John Keith and I do believe Zoe Needham.

5 Q Was it Ogden?

6 A Yeah. Ogden, sorry.

7 Q Now, are you familiar -- you testified that you are
8 familiar with Adam VanOpDorp.

9 A Yes, sir, I am.

10 Q So who is he?

11 A He is a former employee of Needham Excavating, Inc.

12 Q And what was his position?

13 A He was lead man on jobs and ran equipment for us.

14 Q Okay. Now, when you say ran equipment, was that
15 heavy equipment?

16 A Yes, sir.

17 Q Like the lowboy or skid steer --

18 A He could not drive truck. He did not have a CDL.

19 Q Okay. Well, what kind -- what kind of equipment
20 did he operate?

21 A Excavator mostly, backhoe; basically any heavy
22 piece of equipment that we had.

23 Q Okay. Now, isn't it true that Mr. VanOpDorp was
24 discharged on July 8th, 2019?

25 A Yes, sir.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And why was he discharged?

2 A Adam was discharged because of his screw-up on the
3 11th Street project where he laid the pipe wrong on the
4 job, and we had to reinstall the pipe. He also
5 falsified his timecards.

6 Would you like me to start from the beginning, I
7 guess?

8 Q Well -- well, what I would like to do is -- let's
9 go back to the 11th Street job.

10 A Okay.

11 Q So, isn't it true as a heavy equipment -- well,
12 going back to that job, was he operating a piece of
13 heavy equipment?

14 A On the 11th Street job?

15 Q Yes.

16 A Yes, sir.

17 Q And did he have someone working with him at that
18 time?

19 A Yes, he had two laborers working with him.

20 Q And what -- what were the duties of the laborers?

21 A The laborers install the pipe, set the pipe.

22 Q Okay, and so what is -- what would be Mr. Adam
23 VanOpDorp's job on the jobsite?

24 A Adam is the lead man, so every day Adam would have
25 to go in and check the grade, double-check grade,

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 triple-check grade, on pipe or grades that are set. He
2 needs to look over the print every day on the job and
3 make sure that the pipe is installed to the correct
4 grade, the location of the pipe, good housekeeping. He
5 needs to talk to the inspector every day if there is an
6 inspector on the job, to make sure that nothing has
7 changed. He needs to order material every day if
8 material needs to be ordered.

9 He needs to check oil every day, fluids in the
10 machine every morning, and also he needs to make sure
11 everything is fueled and greased every night.

12 Q Okay, so with respect to laying pipe, isn't it true
13 that as the heavy equipment operator, his job is to dig
14 the hole?

15 A Yes, that is also his job, is to dig the hole.

16 Q And isn't it true that the laborers' job is to make
17 sure that the pipe that is being laid is being laid
18 properly?

19 A That is their job, yes, and it is also Adam's job
20 because he is the lead man on the job.

21 Q I know, but as far as installing the pipe and
22 making sure the pipe is aligned properly into the hole
23 at the time that it is being done, is the responsibility
24 of the laborer, is it not? Isn't that correct?

25 A Yes, they lay the pipe.

1 Q Okay. Okay. And so this 11th Street job
2 situation, when did that occur?

3 A I believe in the fall of '18.

4 Q 2018?

5 A Uh-huh.

6 Q Okay. Can you give us a more approximate time?
7 Would that be September, October, November?

8 A I do believe September-ish maybe.

9 Q Of 2018?

10 A Yeah.

11 Q And then you made mention of another reason that
12 Mr. VanOpDorp was discharged, and you said something
13 about a timecard.

14 A Yeah, he falsified his timecard, yes.

15 Q And how did he allegedly falsify his timecard?

16 A He put on more hours of work than he actually did.

17 Q Okay, and how do you know that? What made you --
18 what -- what evidence did you have to support that idea?

19 A On July 8th, when we found out about the falsified
20 timecards, the week before on July 1st, I was in the
21 shop and Chad Havill was also on the job on July 1st
22 with Adam VanOpDorp. On July 1st when he came to the
23 shop, Chad Havill came to the shop; I see him at the
24 shop at 4:00 o'clock.

25 I asked Chad, I said, "Are you guys done for the

1 day?"

2 He said, "Yeah, we left at 3:30 because we did not
3 need to start something that was going to take longer" -
4 - that was going to take them five to six hours to do,
5 so they were going to start the next day. It didn't
6 bother me none, so okay. It happens all of the time. I
7 didn't think nothing of it. Chad had some stuff to do
8 at the shop and then the next week when I got their
9 timecards for that week, when I was going through the
10 timecards and looking at their timecards, I noticed that
11 Adam wrote down ten hours on the day that he only worked
12 eight or eight and a half, depending on if he took a
13 lunch.

14 Q Okay. And so, so Chad Havill -- who is Chad Havill
15 again?

16 A Chad Havill is a former employee of Needham
17 Excavating.

18 Q Okay, so he and Mr. VanOpDorp were working on a
19 jobsite on July the 1st.

20 A Yes, they were working at the Dolan project
21 together.

22 Q Okay, and what were they supposed to be doing on
23 the jobsite?

24 A They were moving dirt on the jobsite. They were
25 excavating; cutting stuff to grade.

1 JUDGE STECKLER: Mr. McKinley, a question here...

2 THE WITNESS: Yes, ma'am?

3 JUDGE STECKLER: Does the -- when you said at the
4 end of the day they have to fluid and grease the
5 machine; is that correct?

6 THE WITNESS: Yes, ma'am, fuel and grease.

7 JUDGE STECKLER: Fuel and grease, okay. So how
8 long does that normally take?

9 THE WITNESS: What our normal day usually is, is we
10 usually work 7:00 to 5:00, 5:30, and the guys usually
11 stop running equipment at 5:00 o'clock, so that gives
12 them a half hour to fuel and grease their equipment.
13 That is how our normal workday normally works.

14 JUDGE STECKLER: So -- so did Havill say that Mr.
15 VanOpDorp was still there fueling and greasing after he
16 left?

17 THE WITNESS: No, he said that him and Adam -- that
18 Adam left and went home and he came back to the shop
19 because he needed to get some parts and some grease.

20 JUDGE STECKLER: Okay, Mr. Williams, you may
21 continue.

22 MR. WILLIAMS: Thank you.

23 Q BY MR. WILLIAMS: Okay, so let's -- let's be clear.
24 So, you -- you -- the basis for your belief that Adam
25 VanOpDorp had falsified his timecard was based on your

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 discussion with Chad Havill on July the 8th. Is that
2 correct?

3 A That's correct.

4 Q Okay.

5 MR. WILLIAMS: Your Honor, may I have your
6 permission to share my screen?

7 JUDGE STECKLER: Please do.

8 MR. WILLIAMS: Hold on for a second.

9 *[Long pause]*

10 Q BY MR. WILLIAMS: Okay, do you recognize that
11 document?

12 A Yep.

13 Q And what is that document? Hold on, let me try to
14 --

15 JUDGE STECKLER: Which General Counsel exhibit is
16 this, please, Mr. Williams?

17 MR. WILLIAMS: This is General Counsel's Exhibit
18 11.

19 JUDGE STECKLER: Thank you.

20 THE WITNESS: Yes, that is Adam's timecard.

21 Q BY MR. WILLIAMS: Okay, now if you look to the side
22 of his timecard, the number "2" is circled.

23 A Yep.

24 Q And so, the "2" is placed under overtime; is that
25 correct?

1 A Yes, sir.

2 Q And then there is an arrow being drawn from the 2,
3 and on the other side of that arrow is "is wrong, should
4 be." What is that notation?

5 A Half hour.

6 Q Okay, and who made that -- who -- who placed that
7 circle around the "2?"

8 A I do believe that is my handwriting.

9 Q Okay, who made the arrow pointing to the 2, or the
10 circle, around the 2?

11 A Me.

12 Q And who put, "Wrong, should be one and a half?"

13 A I do believe that is me.

14 Q Okay. And when did you receive Mr. VanOpDorp's
15 timecard, this timecard?

16 A On Monday the first -- on Monday the eighth, I'm
17 sorry.

18 Q Did he turn it in to you?

19 A I do believe we are doing time, and Adam did not
20 have his card in yet. I do time every Monday, and I
21 called Adam to see where his timecard was, and he said
22 that he hadn't turned it in yet, and I said, "Well, I
23 have to go back into town today. Can I stop and pick it
24 up from you?"

25 He said, "Yeah, that's fine."

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 So, I grabbed it from him and brought it in that
2 day.

3 Q Okay, so the normal course is for the employees to
4 turn their timecards in to you?

5 A Every Monday, yes.

6 Q Every Monday.

7 A Every Monday morning is when they are supposed to
8 have time turned in.

9 Q Okay. And so, when did you think that Adam left
10 the jobsite?

11 A Either 3:00 or 3:30.

12 Q And when -- what -- what time do you think he
13 arrived?

14 A 7:00 o'clock.

15 Q So -- okay...

16 [Long pause]

17 Q So 7:00 to 3:30 is eight and a half hours, and that
18 is why you put a half-hour, so that makes 8.5 hours;
19 correct?

20 A Yes, sir.

21 Q Okay.

22 [Long pause]

23 Q And so, isn't it true that you had a discussion
24 with Adam VanOpDorp when you told him he was being
25 discharged for the 11th Street project and the timecard?

1 A I was in on that discussion, yes.

2 Q Okay, who else was involved with that discussion?

3 A Nick Needham.

4 Q Okay, so it was just you, Nick Needham, and Adam
5 VanOpDorp?

6 A Yes, sir.

7 Q Okay, and that conversation took place on July the
8 8th, 2019.

9 A Yes, sir.

10 Q Okay, the same day he was discharged.

11 A That's correct.

12 Q Okay. And did that discussion take place at the
13 shop?

14 A Yes, in Nick's office.

15 Q Okay.

16 [Long pause]

17 MR. WILLIAMS: I have no further questions, Your
18 Honor.

19 JUDGE STECKLER: Ms. LaRose, do you have any
20 questions?

21 MS. LaROSE: I do.

22 Thank you.

23 DIRECT EXAMINATION

24 Q BY MS. LaROSE: Mr. McKinley, when did you -- you
25 said in your testimony just now [clearing throat] --

1 excuse me, Your Honor. You said just now that you
2 reviewed the timecards of the employees? Is that right?
3 Did I understand you correctly?

4 A Yes, ma'am.

5 Q When did you start doing that?

6 A I started reviewing timecards after Jeff -- Jeff
7 Dunleavy, the former employee that had my position, did,
8 which was December of '18, I do believe.

9 Q Okay. So, six months before the election; is that
10 right?

11 A Yes, ma'am.

12 Q Okay. You -- in support of the Employer's
13 objections to the election, you provided an affidavit to
14 the Employer, that the Employer then filed with the
15 Board. Do you remember doing that?

16 A Yes, ma'am.

17 Q And in that affidavit, you said that Kenny McAdoo
18 runs heavy equipment fifty percent of the time. Do you
19 recall saying that?

20 A Yes, ma'am.

21 Q That was a -- that was not a percentage that would
22 be borne out by the time records, correct?

23 A Correct.

24 Q And -- I am going to switch to Tim Hamann now for a
25 second.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 You and Drew stood up at Tim Hamann's wedding;
2 correct?

3 A Correct.

4 Q You were groomsmen?

5 A Correct.

6 Q Okay, and in your affidavit you say that Tim Hamann
7 was a farmer, "when he works for NEI, he operates
8 equipment a hundred percent of the time." Do you recall
9 saying that?

10 A I do believe I said 95 percent of the time, but,
11 yes, when he works for us, 95 percent of the time, yes,
12 he is running equipment.

13 Q Okay, that's fair. But you said "when he works for
14 NEI." You didn't use that phrase with Kenny because Tim
15 doesn't work for Needham very often, right?

16 A When needed, yes, ma'am.

17 Q I got -- I'm sorry to keep pressing you on this
18 point, Mr. McKinley, but you used the phrase "when he
19 works for NEI," because he does not work there very
20 often, correct?

21 MR. WRIGHT: Object -- objection; asked and
22 answered, Your Honor.

23 MS. LaROSE: The answer I got was non-responsive,
24 Your Honor.

25 JUDGE STECKLER: You may answer, Mr. McKinley.

1 THE WITNESS: Tim works for us in the springtime
2 and the fall time.

3 Q BY MS. LaROSE: Would it surprise you if I told you
4 that for the time period in question, that is preceding
5 the election, he had only worked maybe -- maybe thirteen
6 days in the preceding twelve months?

7 A Would that surprise me, is that what you said?

8 Q Yes.

9 A Probably not, no.

10 Q Okay, so you know, when you folks say spring and
11 summer," it sounds like that is an entire timeframe, but
12 it is really not. It is really like less than two
13 weeks, right?

14 MR. NIEW: Objection. It mischaracterizes what the
15 witness has stated.

16 JUDGE STECKLER: Ms. LaRose, could you please
17 restate the question?

18 MS. LaROSE: Sure. In fact, Your Honor, I am going
19 to withdraw it. I can move on.

20 Q BY MS. LaROSE: And prior to that election in the
21 thirteen or so days that I am talking about, Tim Hamann
22 had never worked for Needham before, correct?

23 A Before that, I didn't do the timecards, so I don't
24 recall.

25 Q Okay. Well, separate and apart from the timecards,

1 you never saw him performing any work for Needham;
2 correct?

3 A There was times that, Ms. LaRose, I would not see
4 guys for months if I was on a job.

5 Q Mr. McKinley, that is not the question I am asking
6 you though.

7 I am asking you whether you saw him ever performing
8 work as an employee for Needham in the period prior to
9 the election.

10 A No, I don't recall seeing him.

11 Q Okay. And since the election, it has been no more
12 than two weeks, right?

13 A Yes.

14 Q It may be less than one week, right?

15 A It is possible.

16 Q Okay.

17 MS. LaROSE: Those are all of my questions for Mr.
18 McKinley.

19 JUDGE STECKLER: Respondent?

20 MR. WRIGHT: Briefly, Your Honor.

21 Judge, I would like to request the ability to share
22 the screen now.

23 JUDGE STECKLER: Please.

24 MR. WRIGHT: Thank you.

25 CROSS EXAMINATION

1 Q BY MR. WRIGHT: Curt, I am going to show you what
2 has been marked as Respondent's Exhibit 1.

3 **(Respondent's Exhibit 1, marked for identification.)**

4 Q BY MR. WRIGHT: I will represent to you that you
5 reviewed this document -- this first page during your
6 testimony with General Counsel. It was marked as
7 General Counsel's Exhibit 11, I believe.

8 MR. WRIGHT: Mr. Williams, is that right? I lost
9 my note on that.

10 MR. WILLIAMS: I believe that is correct.

11 MR. WRIGHT: Thank you.

12 Q BY MR. WRIGHT: This is Adam's timecard that you
13 reviewed with Mr. Williams, correct?

14 A Yes.

15 Q I just want to get some clarification, because it
16 may have been misstated by Mr. Williams, or maybe it is
17 not clear to anybody.

18 At the bottom here, where it says "Wrong, should
19 be..." Is that number just one and a half, or just half
20 hour?

21 A That is just half hour.

22 Q Okay. Okay, I just wanted that clarification.

23 The second page of Respondent's Exhibit 1, and I am
24 sorry it is not -- I can turn it if you want, maybe it
25 will help...

1 Can you identify what this record is?

2 A That is Chad Havill's timecard.

3 Q And for what time period?

4 A 7-1 to 7-6.

5 Q And that was the same time period that you were
6 referencing relative to Adam's last week of work?

7 A Yes, sir.

8 Q And did you review this document in comparison to
9 Adam's, as part of your timecard review?

10 A Yes.

11 MR. WRIGHT: Your Honor, I would move to admit
12 Respondent's Exhibit 1.

13 MR. WRIGHT: No objection, Your Honor.

14 JUDGE STECKLER: Ms. LaRose?

15 MS. LaROSE: No objection, Your Honor.

16 JUDGE STECKLER: Respondent's Exhibit 1 is
17 admitted.

18 **(Respondent's Exhibit 1, received into evidence.)**

19 MR. WRIGHT: Thank you, Your Honor.

20 Q BY MR. WRIGHT: Now, Curt, I want to go back to --
21 Mr. Williams was asking you questions about the 11th
22 Street job, and when that took place, and you said that
23 your recollection was that it was the fall of 2018. Do
24 you recall that testimony?

25 A Yes.

1 Q Was the 11th Street job broken into two phases, to
2 your recollection?

3 A Yes.

4 Q Was the -- was Phase 1 in the fall of 2018, or was
5 it in the summer of 2018, to your recollection?

6 A I do believe that was the summer.

7 Q And was there another job that Adam had mistakes on
8 in the fall?

9 A Yes, sorry. That was the 18th Street project.

10 Q So, is it possible in your testimony with Mr.
11 Williams that you got the two switched around? When you
12 told Mr. Williams, the 11th Street, to your recollection
13 was it --

14 A Yes.

15 Q -- the fall of 2018?

16 A Yes.

17 Q Okay. Okay. Do you recall when the company first
18 became aware of the mistakes on the 11th Street job,
19 Phase 1, that was in 2018?

20 A When we found out about the 11th Street project was
21 July 8th of 2019.

22 Q We had some testimony earlier regarding Brett Gripp
23 in connection with his layoff. You said Brett Gripp
24 lacked the skillset and that basically limited him to
25 driving a dump truck. What did you mean by that?

1 A When Brett was first hired, he told me he could run
2 any piece of equipment or do any job that we asked him,
3 but that was not the truth. There was multiple times
4 that I had to start equipment for Brett, I had to load
5 pipe for Brett on a truck. He could run a backhoe
6 enough to load himself, but otherwise, his skillset was
7 very limited to just running a dump truck.

8 MR. WRIGHT: That's all I have for cross, Your
9 Honor, other than calling this witness on our case-in-
10 chief.

11 JUDGE STECKLER: Thank you.

12 EXAMINATION BY THE COURT

13 JUDGE STECKLER: Okay, Mr. McKinley, can you tell
14 us a little more about the conversation you had when you
15 all terminated Mr. VanOpDorp? How did it start, what
16 was said, who said what?

17 THE WITNESS: I -- I did not say anything in the
18 meeting with Adam VanOpDorp.

19 The meeting started off, Nick telling Adam that he
20 had another screw-up, and it was on the 11th Street
21 project. We showed Adam the pictures of the project and
22 the screw-ups and everything that we had to do on the
23 project to go back and fix it, and the time and money
24 that it was going to cost us.

25 We proceeded to tell him that he falsified his

1 timecards, and that was stealing from us, and that that
2 was unacceptable, and then we proceeded to let him go,
3 and Nick told him that he was no longer allowed on
4 Needham property or on Needham jobsites, and that he
5 needed to go and bring his truck to the back of the
6 shop, and we needed to get all of Needham's tools, or
7 whatever was in there of Needham's, out of the truck.

8 JUDGE STECKLER: You said he falsified timecards.
9 Can you explain that a little bit?

10 THE WITNESS: On July 1st, he put on his timecard
11 that he worked ten hours when he only worked eight and a
12 half.

13 JUDGE STECKLER: Okay, so that was the only
14 timecard that was at issue; is that correct?

15 THE WITNESS: Yes, ma'am.

16 JUDGE STECKLER: Okay, you have been doing
17 timecards -- what did Mr. VanOpDorp say to all of this?

18 THE WITNESS: When -- the only thing that Adam said
19 during that whole conversation in Nick's office was,
20 "Sorry. Maybe I should have checked my book."

21 JUDGE STECKLER: Okay, before you reported the
22 timecard issue to anyone, did you do any sort of
23 investigation into whether he actually made a mistake or
24 anything?

25 THE WITNESS: No, ma'am.

1 JUDGE STECKLER: Okay, did you talk to him about
2 it?

3 THE WITNESS: No, ma'am, not until we had the
4 meeting.

5 JUDGE STECKLER: Okay. Okay, now since you have
6 been doing the timecards, have any other people made any
7 mistakes?

8 THE WITNESS: No, ma'am.

9 JUDGE STECKLER: Okay, Mr. Williams, any redirect?

10 MR. WILLIAMS: No, Your Honor.

11 JUDGE STECKLER: Ms. LaRose?

12 MS. LaROSE: No, Your Honor.

13 JUDGE STECKLER: Mr. Wright or Mr. Niew?

14 MR. WRIGHT: Yes, Judge. Just briefly.

15 Thank you.

16 RECROSS EXAMINATION

17 Q BY MR. WRIGHT: Curt, you just mentioned that
18 following the termination meeting in Nick's office, Nick
19 directed Adam to pull his truck around to the shop so
20 Company property could be removed. Did Adam make any
21 comment about the timecards during that whole process
22 that you were witness to?

23 A Adam said a couple times while we were in the shop
24 unloading everything out of his truck that we needed to
25 look at everybody's timecard because he wasn't the only

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 one cheating on his timecard.

2 MR. WRIGHT: Nothing further, Your Honor.

3 JUDGE STECKLER: Okay, anything additional
4 questions, Mr. Williams?

5 MR. WILLIAMS: No, Your Honor.

6 JUDGE STECKLER: Ms. LaRose?

7 MS. LaROSE: No, Your Honor.

8 JUDGE STECKLER: Okay. Mr. McKinley, I think you
9 are being excused as a witness. You may be subject to
10 recall, so what we are doing is having witnesses not
11 discuss their testimony with anyone until after the
12 hearing is over. Is that understood?

13 THE WITNESS: Yes, ma'am.

14 JUDGE STECKLER: Thank you. Thank you for your
15 time today.

16 *[Witness excused]*

17 JUDGE STECKLER: We will go off the record while
18 General Counsel gets his next witness.

19 *[Off the record]*

20 JUDGE STECKLER: Let's go back on the record.

21 THE COURT REPORTER: We are on.

22 JUDGE STECKLER: Okay, we are back on the record.

23 Mr. Williams, please call your next witness.

24 MR. WILLIAMS: Yes, at this time, the General
25 Counsel would like to call Adam VanOpDorp to the stand.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Mr. VanOpDorp, can you please
2 raise your right hand?

3 (Whereupon,

4

ADAM VANOPDORP

5 having been sworn/affirmed, was called as a witness
6 herein, and was examined and testified via video-
7 conference, as follows:)

8 JUDGE STECKLER: Please state your name for the
9 record and spell it.

10 THE WITNESS: Adam VanOpDorp; A-d-a-m, VanOpDorp,
11 V-a-n-O-p-D-o-r-p.

12 JUDGE STECKLER: All right, is there anyone in the
13 room with you?

14 THE WITNESS: No.

15 JUDGE STECKLER: Have you discussed your testimony
16 with anybody since yesterday morning?

17 THE WITNESS: No.

18 JUDGE STECKLER: Okay, thank you.

19 General Counsel, you may begin.

20 MR. WILLIAMS: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 Q BY MR. WILLIAMS: Are you currently employed?

23 A Yes.

24 Q By whom?

25 A Precision Pipeline.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 Q Okay, how long have you worked there?
- 2 A Since 2020.
- 3 Q Okay. Prior to -- to working there, were you also
- 4 employed by Needham Excavating, Inc.?
- 5 A Yes.
- 6 Q And when did you start working for Needham
- 7 Excavating, Inc.?
- 8 A 2005, 2006.
- 9 Q And how long did you work there?
- 10 A For thirteen years.
- 11 Q Do you remember your last day of work?
- 12 A I do.
- 13 Q When was that?
- 14 A It would have been July 8th, 2019.
- 15 Q Okay, and when you were employed with Needham
- 16 Excavating, Inc., what was your position?
- 17 A Heavy equipment operator.
- 18 Q And what were your duties as a heavy equipment
- 19 operator?
- 20 A Running the excavators, bulldozers, any of their
- 21 dirt-moving equipment.
- 22 Q Okay. And when you first began working for Needham
- 23 Excavating, Inc., was the company unionized?
- 24 A Yes.
- 25 Q By whom?

1 A International Union of Operating Engineers, Local
2 150.

3 Q Okay, that was International Union of Operating
4 Engineers, Local 150?

5 A Yes.

6 Q Okay, and who did they represent?

7 A The heavy equipment operators.

8 Q Okay. At some point, did they stop representing
9 the heavy equipment operators employed by Needham
10 Excavating, Inc.?

11 A Yes.

12 Q Do you remember when?

13 A It would have been in 2017, May.

14 Q Okay, and do you know how that came about?

15 A Another operator, Jake Madden, came around with a
16 petition to sign to de-certify from the Operators, which
17 I did sign, and we had enough signatures to hold a vote,
18 or an election, which we held, and we voted out the
19 Operators, the Local 150 Operators.

20 Q Okay. Now, after Local -- after the International
21 Union of Operating Engineers, Local 150, was de-
22 certified, did your terms and conditions of employment
23 change at any point?

24 A Yes.

25 Q And when did they change?

1 A After the election, they went -- we went onto a new
2 401(k) plan and new health insurance -- health benefits
3 plan.

4 Q Okay, so can you pinpoint a year and a month?

5 A I believe the union insurance credited for it. It
6 lasted -- within a year, we were cut off from the Local
7 Operators benefits package.

8 Q Do you remember what year that was.

9 A That would have been 2018?

10 Q Okay, and I think you made mention of the health
11 insurance.

12 A Yes.

13 Q Okay. And then what happened with the health
14 insurance?

15 A We had credit -- we had credits built up for health
16 insurance. We were running -- we were keeping the
17 insurance until basically the Union shut us off within
18 that year, but until -- up until we lost their Union
19 health insurance, Needham provided health insurance
20 after that.

21 Q Okay, can you explain to us what you mean by
22 "credits" that you built up?

23 A In the Local, they give you, basically, credit
24 points to your health insurance, based on how much you
25 have worked throughout the year.

1 Q Okay, and I think you mentioned something about the
2 Union's pension plan ending?

3 A Yes.

4 Q Okay, and after the Union's pension plan
5 terminated, what, if anything happened after that with
6 Needham -- with the employer?

7 A Needham started putting -- started up a 401(k)
8 plan.

9 Q Do you know when Needham Excavating started that
10 401(k)?

11 A It would have been within that -- when we de-
12 certified.

13 Q So do you think it was right within 2018?

14 A Yes.

15 Q After the Union was de-certified, did the Union
16 ever make an attempt to re-organize the employees or the
17 heavy equipment operators of Needham Excavating, Inc.?

18 A Yes.

19 Q And when did that occur?

20 A I had a conversation with -- it would have been
21 back in November of 2018, with Marshall Douglas.

22 Q And who is Marshall Douglas?

23 A He -- Marshall Douglas would be the treasurer of
24 Local 150.

25 Q Okay. And what was your discussion?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A We discussed the -- *[Voice transmission garbled]*
2 Local 150 Operators back into Needham Excavating to re-
3 organize, and basically *[Voice transmission garbled]*
4 again.

5 JUDGE STECKLER: Okay, you are kind of fading out,
6 so I am not sure what is going on there, Mr. VanOpDorp,
7 but if you lean back a little bit, it looks like it is -
8 - it is cutting out, so try to stay as close as you can
9 to the computer and the mic.

10 THE COURT REPORTER: He will probably have to
11 repeat that answer. It sounds like somebody was moving
12 some paperwork over a microphone, is kind of what it
13 sounded like.

14 MR. CONNOLLY: When Adam was talking, the box with
15 the phone of where Mr. Wright and Mr. Niew are at, it
16 went up, and so when that happens, it cuts out the mic
17 of whomever is speaking, so you won't be able to hear
18 Adam that well, as the microphone is picking up sounds
19 from other people in the microphone.

20 MR. WILLIAMS: Thank you.

21 Q BY MR. WILLIAMS: Okay, Mr. VanOpDorp, so that the
22 record is clear, why don't you go back to the
23 conversation you had with Tracey Marshall, and again,
24 who was Tracey Marshall?

25 JUDGE STECKLER: Or was it Marshall Douglas?

1 THE WITNESS: Yeah.

2 Q BY MR. WILLIAMS: Marshall Douglas, sorry.

3 When was that discussion?

4 A That would have been in like November of 2018.

5 Q And what was discussed?

6 A We discussed re-organizing Needham Excavating, and
7 to get the Union back in to represent the heavy
8 equipment operators.

9 Q Okay. And what else was discussed?

10 A Just basically the re-organize -- the re-organizing
11 campaign of it, and what was going to be the process,
12 which was basically going to be getting the operators to
13 sign the authorization cards.

14 Q Okay. And after November 2018, did you have any
15 further discussion with Marshall Douglas about re-
16 organizing Needham Excavating, Inc.?

17 A Yes.

18 Q And when was that?

19 A Yeah, me and Jake Madden went in. I believe March
20 5th was when me and Jake went down to the Union Hall and
21 we both signed our authorization cards at the Union Hall
22 there.

23 Q Okay, and who did you give -- did you give your
24 cards to anyone after you signed them?

25 A Yes, we turned them in to Shannon Vickers.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And who is Shannon Vickers?

2 A Shannon Vickers is the Organizer for District 8 of
3 Local 150.

4 Q Okay. So after March 2019, did you ever have any
5 discussion with employees of Needham Excavating, Inc.
6 about joining the Union?

7 A Yes.

8 Q And when -- when did that start?

9 A Oh, after March when we signed them, I just started
10 asking the guys, you know, oh, if they were interested
11 in signing a card or trying to get represented again by
12 their local.

13 Q Okay. How often did you talk to the employees?

14 A Oh, maybe when I would ask them, maybe once a day,
15 maybe once every other day, maybe whenever I would see
16 them.

17 Q Okay. So when you talked to them, where -- was
18 there a normal place that you would talk to them, or
19 would it have been in just any location when you would
20 talk to the employees?

21 A It would have been in any location.

22 Q Okay. Now, directing your attention to March 18th,
23 2019, what, if anything, happened on that day that you
24 recall?

25 A March 18th, we -- I received a phone call from Joe

1 Needham.

2 Q And who was Joe Needham?

3 A He would be the owner and President of Needham
4 Excavating.

5 Q Okay. And what was discussed, if anything?

6 A He -- we discussed -- he started off the
7 conversation with him basically asking what my thoughts
8 were about going non-union, and how everything was going
9 okay since we de-certified, and we were non-union. We -
10 - we basically went in and he asked if I was hearing any
11 bitching or anything from any of the other guys, or from
12 -- being as we went that way, and I told him that, you
13 know, I really didn't hear anything, and we just -- I
14 just basically talked about personality clashes between
15 the laborers and the guys we had, and then, you know, we
16 got to talking that, you know, basically, he said -- Joe
17 said, we basically have the work here. We have got
18 either -- if you don't want to do the work or you don't
19 like it here, then, basically, get the fuck out at the
20 end of this conversation, but I never, you know -- never
21 did answer his question about what I thought about being
22 non-union or the causes of any bitching going on, due to
23 the *[Voice transmission garbled]* our guys.

24 JUDGE STECKLER: Were those his exact words, that
25 "if you don't like it, get the fuck out?"

1 THE WITNESS: Yes.

2 JUDGE STECKLER: Okay, Mr. Williams.

3 Q BY MR. WILLIAMS: During that conversation, did he
4 make mention of the fact that you weren't the only
5 employee that he had spoken to about remaining non-
6 union?

7 A Yeah, he mentioned that he heard that, you know,
8 that some of the guys were getting contacted by Ryan
9 Drew about the --

10 Q Who is Ryan Drew?

11 A Ryan Drew would be a business agent for
12 International Union of Operating Engineers, Local 150.

13 Q Okay. And what, if anything else, did he say about
14 that?

15 A He just -- Joe asked if we were getting contacted -
16 - if some of the other guys were getting contacted by
17 them, and if I had heard anything from them or not.

18 Q And does Joe ever refer to you -- other than as
19 Adam? Does he refer to you, other than Adam?

20 A Yes, my nickname with the guys would be "Lefty."

21 Q And why would Joe and the other guys refer to you
22 as "Lefty?"

23 A I am -- if you have seen my left arm, just past my
24 elbow.

25 Q And do you recall what time this conversation

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 started with Joe Needham?

2 A Oh, it would have been -- maybe around 9:00 or
3 10:00 o'clock that day maybe.

4 Q Okay, and where were you at the time?

5 A I would have been in -- we were on a jobsite in
6 Davenport.

7 Q Davenport, Iowa?

8 A Yes.

9 Q And did you have the occasion to tape record this
10 conversation with Joe Needham on March 18th of 2019?

11 A I did.

12 MR. WILLIAMS: At this time, Your Honor, I would
13 request permission to have the tape recording -- to
14 share the tape recording and have it played. The tape
15 recording is 18 minutes, so I am going to ask that Mr.
16 Connolly assist me in doing that.

17 MR. NIEW: Your Honor, I object that he has not
18 laid a foundation for listening to a tape recording.
19 They need to show that it was thoroughly and accurately
20 represented to the *[Voice transmission garbled]*
21 elements. I have heard none of them.

22 JUDGE STECKLER: Okay, what other elements would
23 you like to hear, Mr. Niew?

24 MR. NIEW: That the witness has first-hand
25 knowledge or overheard the conversation, that he can

1 identify the person and the voices, and identify how the
2 recording was made.

3 JUDGE STECKLER: Okay. Well, he has already
4 identified that he has recorded it, so that -- that
5 shows some identification.

6 Mr. VanOpDorp, how did you manage to record the
7 conversation?

8 THE WITNESS: I had my phone on speaker, and then I
9 had a recording -- a little tape recording device.

10 JUDGE STECKLER: So you didn't hit the "record" in
11 your phone then, did you?

12 THE WITNESS: No.

13 JUDGE STECKLER: Do you always carry a tape
14 recording device with you?

15 THE WITNESS: Yes. There are situations that I do,
16 yes.

17 JUDGE STECKLER: Okay.

18 MR. WRIGHT: I'm sorry, Judge. I didn't hear that
19 response.

20 JUDGE STECKLER: Yes, he does carry a --

21 MR. WRIGHT: Did he say "per stipulation?"

22 JUDGE STECKLER: No --

23 MR. WRIGHT: [Voice transmission garbled]

24 JUDGE STECKLER: For situations like this, I think
25 is what you said.

1 THE WITNESS: For situations.

2 MR. WRIGHT: Okay, thank you. That is the part I
3 didn't hear.

4 JUDGE STECKLER: Okay, any additional foundation
5 that you need, Mr. Niew? Once we get on the record, we
6 will be able to identify the voices.

7 MR. NIEW: That's fine, Your Honor.

8 JUDGE STECKLER: Okay.

9 MS. LaROSE: Your Honor?

10 JUDGE STECKLER: Ms. LaRose?

11 MS. LaROSE: I keep seeing the, what I think is the
12 audio phone line from Mr. Wright's office getting
13 highlighted, like it is taking control of the sound.

14 Mr. Wright, would it be possible to mute that until
15 you are ready to object?

16 MR. WRIGHT: I mean, I prefer not to. I -- I will
17 clear the area. I don't want it to impede us from
18 objecting and getting an answer out before -- while I
19 reach over and mute it.

20 MS. LaROSE: Well --

21 MR. WRIGHT: There were some papers underneath the
22 phone today, which I think may have been the problem.

23 MS. LaROSE: No, it is continuing to happen, Your
24 Honor, throughout, because they are moving around and
25 they are probably just close enough to the phone, that

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 it is then diverting the resource from the witness, and
2 I am hearing -- I am hearing muffled answers again and
3 again, each time that space where the audio for Mr.
4 Wright's office is activated.

5 I don't know if the Court Reporter is having a
6 problem also.

7 JUDGE STECKLER: Mr. Molinaro, how about for you?

8 THE COURT REPORTER: I am definitely hearing that,
9 as well. It is -- the speakerphone is just picking up
10 any time they move, shuffling papers, and it just blocks
11 everything else out.

12 JUDGE STECKLER: Okay, is there some way that we
13 can rearrange things so that the -- the movement on your
14 side, Mr. Wright, does not pick up?

15 MR. WRIGHT: I think we can all take extra care not
16 to move.

17 JUDGE STECKLER: I know that is difficult,
18 especially sitting in a hearing.

19 Let's try it out and see how it works, and if it
20 doesn't work, then we will try something else, is that
21 okay?

22 MR. WRIGHT: Your Honor, I am fine with that. I
23 will just move the phone closer, and if it -- it seems
24 like a line of questioning is going in a direction that
25 is going to call for an objection, then I will do my

1 best to unmute it.

2 JUDGE STECKLER: Okay.

3 MR. WRIGHT: Is that better?

4 JUDGE STECKLER: Okay, that sounds fine.

5 Which of you is responsible for objections and
6 crossing Mr. VanOpDorp today, by the way?

7 MR. WRIGHT: That will be me.

8 JUDGE STECKLER: Okay. All right, in that case, is
9 the Union prepared to play the recording?

10 MR. CONNOLLY: Yes, Your Honor.

11 JUDGE STECKLER: Okay.

12 MR. CONNOLLY: Are you ready?

13 JUDGE STECKLER: Yes.

14 THE COURT REPORTER: I have one quick question,
15 Judge.

16 So, are we going to -- we are going to play this
17 while we are on the record, and we are going to
18 transcribe this. Do we know who the players are,
19 because I don't know who is going to be on here.

20 JUDGE STECKLER: Okay, Mr. VanOpDorp, can you
21 explain, please?

22 THE WITNESS: This will be myself, and then Joe
23 Needham.

24 JUDGE STECKLER: Is there anyone else around during
25 this conversation?

1 THE WITNESS: No.

2 JUDGE STECKLER: So we will recognize your voice
3 immediately, and then the other voice will be Mr.
4 Needham; correct?

5 THE WITNESS: Correct.

6 THE COURT REPORTER: Okay.

7 JUDGE STECKLER: All right, any other questions?
8 General Counsel, do you have a transcript of this
9 also?

10 MR. WILLIAMS: I do. I do. I was going to play
11 the tape, and then after the tape, move for the
12 admission -- well, I can share my screen for the
13 transcript after the tape is played, and then move for
14 the admission of both exhibits, General Counsel's
15 Exhibit 3 and 4, which would be the recording and the
16 transcript.

17 JUDGE STECKLER: Okay, we will do that then.

18 Mr. Connolly, you may go ahead.

19 MR. CONNOLLY: Yes, Your Honor.

20 *[Whereupon, the tape recording was played]*

21 "JOE: Hi, Lefty.

22 ADAM: Hey, Joe.

23 JOE: How's it going?

24 ADAM: Pretty good. What's going on?

25 JOE: Oh, not much, not much. I ahh -- just

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 *calling. I've been hearing some things that -- just*
2 *wanted to know what you thought about being non-union,*
3 *how it's going, or whatever. I know we had trouble last*
4 *year with the fuckin' communications, and I talked to a*
5 *few other guys, and I think the fuckin' issue was we had*
6 *trouble when we hired the Laborers, and we had more*
7 *trouble when we hired Jeff. Fuckin' laborers were a*
8 *bunch of bitches, and I didn't know what your take on*
9 *the whole thing was.*

10 *ADAM: Oh, I -- I agree on that.*

11 *JOE: Yeah.*

12 *ADAM: It seemed like then the labors came and, you*
13 *know, uhh, then fuckin' Jeff, it just seemed like*
14 *everything was like everybody was battling each other,*
15 *you know?*

16 *JOE: Yeah.*

17 *ADAM: You know it.*

18 *JOE: Yeah.*

19 *ADAM: Wasn't like everybody was a team anymore.*
20 *It was like we were all, every man for himself.*

21 *JOE: Yeah. Yeah. That's kind of what I've*
22 *fuckin' been getting outta' everybody --*

23 *ADAM: You know.*

24 *JOE: -- that I talk to.*

25 *ADAM: Right.*

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JOE: You know, so hopefully Curt in the office
2 takes care of that.

3 ADAM: Right.

4 JOE: You know what I mean?

5 ADAM: Oh, yeah. I hear ya'.

6 JOE: 'Cause that shit needs to stop! The bitchin'
7 needs to stop, and if there's a fuckin' problem, then we
8 need to fuckin' talk the problem through before
9 everybody gets pissed!

10 ADAM: Exactly.

11 JOE: You know what I mean? Yeah, yeah, but I
12 didn't know what you thought. It sounds like you're
13 workin', huh?

14 ADAM: Oh, yeah. Yep, we ran a little short on
15 pipe, so I got Bryce cuttin' some pieces and --

16 JOE: Oh.

17 ADAM: I'm running down to utility right now.

18 JOE: Oh, okay, yeah. Where you at? Des Moines?

19 ADAM: Uh-huh, at Portillo's.

20 JOE: Oh, okay, okay.

21 ADAM: Yeah.

22 JOE: Oh, I didn't know.

23 ADAM: Yep.

24 JOE: I didn't know what your thought were, if they
25 were the fuckin' same as everybody else's --

1 ADAM: Oh, yeah, that's pretty much it, like I
2 said.

3 JOE: Yeah.

4 ADAM: It seemed like when the -- when all these
5 guys came up, you know, they're -- like I said, it was
6 all the personality clashes with them guys, and
7 everybody, they were all, just, you know, what, you know
8 [laughing]. I don't know what to say really about em'.

9 JOE: Yeah. Yeah.

10 ADAM: They were always -- always causing trouble
11 or stirring up the shit pot between everybody, and like
12 I said, then it kind of made it, got to, especially on
13 the pipe crews, you know. Joe, it's like -- it's easy
14 to -- I told Jake, like I was talking to Jake one day,
15 and I go, 'It's easy to fuckin' run a dirt crew when you
16 tell the guys what's going on, and everybody's doing
17 something on opposite ends and in the machines.'

18 JOE: Yeah.

19 ADAM: You know, you're -- everybody can cuss or,
20 you know, not be right there, but with these pipe crews,
21 I mean, you're fuckin' right there and you're listening'
22 to all this shit, and everybody's talking, you know, and
23 you gotta' hear it all 'cause you're right together
24 [Laughs].

25 JOE: Yeah. Yeah.

1 ADAM: You know?

2 JOE: And I don't know if you heard what we think
3 Jason did?

4 ADAM: What's that?

5 JOE: He shit in his fuckin' tool bucket before he
6 left!

7 ADAM: Oh, yeah? [Laughing]

8 JOE: Yeah, on top of his tools!

9 ADAM: Jesus Christ!

10 JOE: Yeah.

11 ADAM: Yeah, I don't --

12 JOE: Well, we're picking' it up and getting' a
13 fuckin' DNA sample to see whose it was!

14 ADAM: Yeah, yeah, well --

15 JOE: Yeah.

16 ADAM: Yeah, cause -- cause when he -- when he quit
17 or whatever on Tuesday, I was with him, then Curt called
18 me, and he was just like, 'Well, did he get whatever
19 tools was his and give us back what was ours?'

20 And I go, 'I couldn't tell ya' what was his and
21 yours,' and I go, 'I don't know,' and I go, 'He was in
22 the trailer and I didn't see him taking anything out. I
23 don't know.'

24 JOE: Yeah.

25 ADAM: So I haven't even been in the trailer, you

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 *know?*

2 *JOE: Yep. Yeah, well somebody shit in the bucket.*

3 *ADAM: Jesus Christ.*

4 *JOE: Yeah.*

5 *ADAM: How old are we?*

6 *JOE: What's that?*

7 *ADAM: I said, 'How old are we?'*

8 *JOE: Yeah, that's right.*

9 *ADAM: You know?*

10 *JOE: Yeah, yeah, but I didn't know what the fuck*
11 *was going' on or whatever, yeah, or how bad things were.*

12 *ADAM: Yeah.*

13 *JOE: You know? Yeah.*

14 *ADAM: As far as I am, I'm just -- like I say, I've*
15 *just been doing' what I can do. I haven't been -- I*
16 *just been trying to -- not be involved with all the*
17 *drama shit, you know?*

18 *JOE: Yeah.*

19 *ADAM: Just --*

20 *JOE: Yeah.*

21 *ADAM: Just let em' do their thing and keep -- keep*
22 *goin'. That's all I've been doin'.*

23 *JOE: But their fuckin' drama has to quit.*

24 *ADAM: Oh, I -- I get it.*

25 *JOE: I don't know, I might be wrong, but I think*

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 *Jeff was part of creating the drama, too!*

2 *ADAM: Right.*

3 *JOE: You know, 'cause I know that he didn't get*
4 *the fuckin' jobs laid out in time for you guys.*

5 *ADAM: Oh, yeah. It was always something.*

6 *JOE: Yeah.*

7 *ADAM: [Laughs]*

8 *JOE: I mean, there's always gonna' be something,*
9 *but the first fuckin' day, there shouldn't be anything!*

10 *ADAM: Right, exactly.*

11 *JOE: Every time. Yeah.*

12 *ADAM: Exactly.*

13 *JOE: Yeah.*

14 *ADAM: And then it'd fall back on us or a lot of*
15 *it'd fall back on us to, you know, because we weren't*
16 *getting the production and --*

17 *JOE: Yeah.*

18 *ADAM: -- you know.*

19 *JOE: Yeah, yeah.*

20 *ADAM: That -- that was hard; that was pretty hard*
21 *[Laughs]*

22 *JOE: Yeah.*

23 *ADAM: Because you know us, we're trying' to get as*
24 *much done in a day --*

25 *JOE: Yeah, yeah, but I don't know. All the*

1 Operators happy. Have you heard any bitchin' about
2 anything?

3 ADAM: No, no, I haven't.

4 JOE: I mean, out of the Operators, yeah, I mean,
5 fuck, everybody with their 401(k)'s made a ton of
6 fucking money last year.

7 ADAM: Yep, yep, for sure.

8 JOE: You know what I mean?

9 ADAM: Oh, yeah, I've been --

10 JOE: And then --

11 ADAM: I've been watching mine.

12 JOE: You make a shit -- yeah, yeah. Well, then
13 you make a shit load of extra on that prevailing wage!

14 ADAM: Oh, yeah, yeah, last --

15 JOE: Yeah.

16 ADAM: Last year was the best year I've ever had.

17 JOE: Yeah, yep. No, I just didn't know what the
18 hell was all going on and I wanted to talk to fuckin'
19 everybody --

20 ADAM: Right

21 JOE: -- to see what the fuck was all going' on,
22 make sure nobody's got a different take on what the
23 fuck's wrong here.

24 ADAM: Right!

25 JOE: Yeah, yeah.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 ADAM: Yeah.

2 JOE: Or if there -- or if there are any regrets of
3 going non-union or anything, if you think that caused it
4 or what, you know?

5 ADAM: Right.

6 JOE: Or if it was the laborers or what, yeah.

7 ADAM: Yeah, I think -- like I say -- like I say,
8 with Jeff and everybody, I think it was really hard, and
9 you know, the labors, I think that was a big part of it.
10 You know, just different personalities clashing
11 everywhere, and --

12 JOE: Yeah, yeah.

13 ADAM: -- like I said, I think we got a good group
14 of guys here, you know?

15 JOE: Yeah, yeah, but you don't think going non-
16 union was any cause of it, do ya'?

17 ADAM: I mean --

18 JOE: With our regular guys?

19 ADAM: I mean, I think it was just be -- I think a
20 lot was Jason, pushin', you know, like bein' pissed
21 about it, and the, you know, I think that's what sparked
22 up all the other labors, you know, being mad that we did
23 go that way.

24 JOE: Well, we -- and here's the thing, Adam, is
25 here's what we offered the laborers in a contract. The

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 contract, there's two things we offered em', a dollar
2 fifty over scale, from whatever the association agreed
3 to. A buck and a half over that, their pensions goes
4 into a 401(k), and there -- and we can sublet paving to
5 non-union, asphalt and concrete --

6 ADAM: Okay.

7 JOE: -- street paving; that's our offer.

8 ADAM: Right.

9 JOE: And they won't take it.

10 ADAM: Right.

11 JOE: The pension's the biggest kick; you know what
12 I mean?

13 ADAM: Oh, yeah.

14 JOE: Yeah.

15 ADAM: Yep.

16 JOE: We owe Operators \$340 grand, and I don't want
17 right now, we owe the laborers little to nothin', if
18 anything --

19 ADAM: Yeah.

20 JOE: -- and we don't want to get into that fucking
21 boat again!

22 ADAM: Right.

23 JOE: So if they put their money in a 401(k) and
24 take the buck and a half, we'd probably be happy.

25 ADAM: Right.

1 JOE: But they won't take the motherfucker --

2 ADAM: Yeah.

3 JOE: -- 'cause they don't want their like the
4 Operators, and they don't want to give up their pension.

5 ADAM: I hear you.

6 JOE: And Adam, I don't know how much you got in
7 your fuckin 401(k) already, but it's gotta' be a fucking
8 boat load.

9 ADAM: Yeah, oh, yeah.

10 JOE: For almost two years, you know, what I mean,
11 I know. I think it's 12 or 13 bucks an hour, or
12 whatever the fuck it was.

13 ADAM: Yep.

14 JOE: You know that's goin' in there, so -- and you
15 guys worked a shitload of hours, so its gotta' be 25 or
16 30 grand a year that you're puttin' away.

17 ADAM: Oh, yeah.

18 JOE: And it's been two years, you know.

19 ADAM: Yep. I'm at, uhh, oh, I just looked at it
20 here at the beginning of the month -- I normally look at
21 it at the beginning of the month.

22 JOE: Yep.

23 ADAM: It was like fifty-four.

24 JOE: Like what, Adam?

25 ADAM: Fifty-four thousand.

1 JOE: *Yep, yep, yep.*

2 ADAM: *So...*

3 JOE: *The biggest thing is, never touch it.*

4 ADAM: *Right.*

5 JOE: *Never touch it! There's gonna' be years it's*
6 *gonna' go from a hundred grand to seventy-five grand,*
7 *you gotta' bite your tongue and let it roll.*

8 ADAM: *Right.*

9 JOE: *As young as you guys are...*

10 ADAM: *Yeah, exactly.*

11 JOE: *You know what I mean.*

12 ADAM: *Yep.*

13 JOE: *It'll all come back.*

14 ADAM: *Oh, yeah.*

15 JOE: *Overall, it'll out-perform everything. You*
16 *just can't look at the bad years, and that's what the*
17 *Operators always tell everybody about their pension, you*
18 *know. Well, look at the bad years, look at the fucking*
19 *401-K's. They don't do this and they don't do that!*
20 *Well, Garvey, you know the black crane operator?*

21 ADAM: *Yeah.*

22 JOE: *You knew him, didn't you?*

23 ADAM: *Yeah.*

24 JOE: *He fuckin' died three years into his pension.*

25 ADAM: *Right.*

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JOE: What's his fuckin' kids get out of it now?

2 ADAM: Yeah, exactly.

3 JOE: Nothing; they get what he paid in and that's
4 it -- no interest.

5 ADAM: Wow.

6 JOE: You know what I mean.

7 ADAM: Oh, yeah.

8 JOE: So you get to be 60 years old, you fucking
9 die, mean with the Operators' pension, you'll get back
10 what you put in, and that's it! No interest!

11 ADAM: Right.

12 JOE: Now, with 401(k), Michelle and the kids get
13 it all.

14 ADAM: Right.

15 JOE: Or the kids get it all.

16 ADAM: Yep.

17 JOE: They get fuckin' everything in there.

18 ADAM: Yeah.

19 JOE: And that's what them fuckers don't
20 understand! Them Laborers just don't fuckin' understand
21 that.

22 ADAM: Right.

23 JOE: The maximum they get credit for is 1,500
24 hours a year.

25 ADAM: That's just fuckin' crazy.

1 JOE: Yeah! It'n it! Yeah!

2 ADAM: I don't understand that.

3 JOE: Yeah, yeah, yeah, because I guess there's one
4 issue goin' on with the insurance. This whatever when
5 cut out our best fuckin' platinum health insurance or
6 something. This next one cut it way back, so we're
7 gonna' try figuring out if there's a supplement plan or
8 something we can buy to get it back up.

9 ADAM: Yeah.

10 JOE: You know what I mean?

11 ADAM: Right.

12 JOE: Yeah, or something.

13 ADAM: Perfect.

14 JOE: Because our health insurance cost us under \$5
15 an hour last yar.

16 ADAM: Awesome.

17 JOE: Yeah, compared to the seven or you're --
18 you're getting' the three, so it'd be compared to the
19 fourteen dollars an hour they were.

20 ADAM: Right:

21 JOE: So, if we can get by for another couple bucks
22 an hour to get that back up where it needs to be, but
23 the issue is all the union shit takes fifteen, twenty
24 grand a month in lawyer fees.

25 ADAM: Right.

1 JOE: So we gotta' have some savings there to be
2 able to pay for all this.

3 ADAM: Right.

4 JOE: I still think everybody's gonna' be better
5 off in the end!

6 ADAM: Oh, yeah.

7 JOE: Yeah, and I heard a rumor Drew's callin'
8 around looking for signatures trying to get everybody to
9 rejoin.

10 ADAM: Oh boy.

11 JOE: Yeah, yeah. So I didn't know if you'd heard
12 from 'em or not or anything, but, yeah.

13 ADAM: Oh, uhh, I was settin' the GPS up and, uhh,
14 the poles up by the parking lot up there, and Shannon
15 came over talking to me for a minute, but --

16 JOE: Yeah.

17 ADAM: Nothin' came about it.

18 JOE: No, I heard they called Pickle and Brandon
19 and they called some guys. So I was just wonderin', I
20 guess, one of em' got a hold of Tracey, so I didn't know
21 who they'd all tried getting a hold of --

22 ADAM: Right.

23 JOE: -- to see what was going on. I hope
24 everybody's still happy.

25 ADAM: Right.

1 JOE: You know, 'cause we gotta' get rid of this
2 fuckin' whining bullshit!

3 ADAM: Oh, I hear you; for sure makes it.

4 JOE: Don't you think?

5 ADAM: Oh, fuckin. It makes it a hell of a lot
6 easier out here. Every time these jobs are getting more
7 and more fuckin' difficult. These fuckin' sites, you
8 know; everything it's easier. It'd be easier to get
9 done if there wasn't any bitchin' [Laughs].

10 JOE: Yeah, it'd be a lot more fun, too. It'n it?

11 ADAM: Yeah.

12 JOE: Here's the fuckin' thing: We got the job, we
13 gotta' do it! Here's your options: either do the
14 fuckin' job or go home!

15 ADAM: Right.

16 JOE: Don't do no good to bitch about it.

17 ADAM: Yeah.

18 JOE: If you hate it that bad, then fuckin' go
19 home!

20 ADAM: Yep, exactly, you know, and --

21 JOE: You know, 'cause the next one might be a good
22 one or the next one might be worse!

23 ADAM: Exactly.

24 JOE: Yeah.

25 ADAM: Like I said. These jobsites get more and

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 more -- it's not straight cut. Fuckin', square building
2 and square parking lot anymore, it doesn't seem like ya'
3 know and --

4 JOE: No, no.

5 ADAM: And like I say, it'd be easier if the
6 bitchin' -- if there wasn't no bitchin' around, and we
7 could just go in and everybody go home, you know.

8 JOE: That's -- that's what we gotta' get to, back
9 to that, 'cause it used to be like that!

10 ADAM: Yes, sir.

11 JOE: Like Tracey said, when he first started, it
12 was fuckin' grand. Nobody bitched about anything. We
13 just fuckin' went and worked --

14 ADAM: Yep.

15 JOE: -- ya' know, yeah, and -- and everybody did
16 their own thing. Now, there's bitchin' all over.

17 ADAM: Oh, yeah.

18 JOE: And I don't know -- and I don't know what you
19 think, but I think Jeff was part of the problem, and I
20 think the laborers were!

21 ADAM: Oh, yeah.

22 JOE: 'Cause I think Jeff stirred the pot that way,
23 too much for bein' a boss!

24 ADAM: Oh, yeah.

25 JOE: Yeah.

1 ADAM: I agree on that.

2 JOE: Yeah, 'cause you know how Daniel and I get
3 along; not very fuckin' good. We don't work together
4 very well.

5 ADAM: Right.

6 JOE: You know, that, and then when I heard that
7 they were bitchin' to him, and nobody wanted to work
8 with Boo n' that, I thought about it a while, and then I
9 thought, you know, we don't have anybody that fuckin'
10 calls for anybody but Boo! We got customers that want
11 Boo to go do the fuckin' work.

12 ADAM: Right.

13 JOE: So, who's doing the right thing and who's
14 doing the fuckin' wrong thing here?

15 ADAM: Yeah, exactly.

16 JOE: You know what I mean?

17 ADAM: Oh, yeah.

18 JOE: I mean, you know what he's like; the fucker's
19 not a bullet.

20 ADAM: Oh.

21 JOE: Good operator, but it is what it is. I can't
22 fuckin' change him!

23 ADAM: Oh, yeah.

24 JOE: Curt can't change him! So are we better off
25 with or without him?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 ADAM: Right.

2 JOE: I know the answer. You know we're better off
3 with him.

4 ADAM: Yeah.

5 JOE: 'Cause he fuckin' -- he gets the job done
6 like out in Des Moines. He's fuckin got it under
7 control.

8 ADAM: Oh, yeah.

9 JOE: Mark at 3M likes him, you know.

10 ADAM: Oh, I --

11 JOE: He knows what the fuck's goin' on.

12 ADAM: Oh, yeah. Me n' him got along great out
13 there, fuckin' when I went out there, I mean.

14 JOE: Yeah, yeah.

15 ADAM: I don't have a problem with him.

16 JOE: No, well, you know what he gets like.

17 ADAM: Yep.

18 JOE: Ya' know, but fuck, you can't change him!

19 ADAM: No, no. We all got out little, you know.

20 JOE: Fuckin' yeah.

21 ADAM: We all got our little things, so...

22 JOE: Yep, well, when I heard that, ya' know, I
23 thought about it for a while before I said anything to
24 anybody, and then it hit me; well, he's the only fuckin'
25 operator we got that our customers call and say, 'Hey,

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 we want him to do this.'

2 ADAM: Yeah.

3 JOE: Ya' know, he goes, he does the whole thing,
4 and nobody bitches about it.

5 ADAM: Right.

6 JOE: You know, we don't have complaints. All we
7 get's compliments from em', from the superintendents he
8 works for. So, but anyway, that was just one thing that
9 took me a while -- probably took me a month to think
10 about it before I said anything to anybody.

11 ADAM: Yeah.

12 JOE: You know --

13 ADAM: I hear ya'.

14 JOE: And -- and that's my fuckin' return to that
15 comment.

16 ADAM: Yep, I agree.

17 JOE: Yeah, yeah.

18 ADAM: I agree with ya' on that.

19 JOE: Yeah, yeah, so -- but you know, I just wanted
20 to call and check in to see what was goin' on.

21 ADAM: Oh, yeah. No, like I said.

22 JOE: Aadi -- and make sure all the game plans in
23 the right fuckin' area.

24 ADAM: Yep, for sure.

25 JOE: 'Cause there's too much bitchin' and I'm

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 *hearig way too much fuckin' bitchin outta' guys.*

2 *ADAM: Right.*

3 *JOE: And that bitchin's gotta' stop. If you don't*
4 *fuckin' like it here, then get the fuck out.*

5 *ADAM: Yep.*

6 *JOE: You know what I mean? If you think you can*
7 *get a better deal somewhere else, I don't fuckin' blame*
8 *ya!*

9 *ADAM: Right.*

10 *JOE: You know, yeah -- yeah, but so anyway, yeah,*
11 *something comes up or whatever, then we can go from*
12 *there, but I just wanted to make sure everybody's*
13 *opinion was matchin' here.*

14 *ADAM: Right.*

15 *JOE: It sounds like it.*

16 *ADAM: Yep.*

17 *JOE: You know.*

18 *ADAM: For sure.*

19 *JOE: It sounds -- yeah, 'cause bitchin' don't do*
20 *no good.*

21 *ADAM: No, I agree.*

22 *JOE: Yeah, yeah, yep. So...*

23 *Okay, Lefty, I just wanted to make sure your*
24 *opinion was the same as everyone else's.*

25 *ADAM: Yes, sir. Nope.*

1 JOE: And then, I didn't, like I said, then I hears
2 150's fuckin' callin' around tryin' to get another vote.
3 I think tryin' to get guys to vote, so.

4 ADAM: Right.

5 JOE: I don't think they'd have a chance but who
6 knows, you know.

7 ADAM: Welp, I'll keep my ears open and I'll let
8 you know if anything comes up.

9 JOE: Yeah, let me know -- let me know if you hear
10 anything from 'em.

11 ADAM: Okay.

12 JOE: Okay.

13 ADAM: All right.

14 JOE: Sounds good.

15 ADAM: See 'ya, Joe.

16 JOE: Yep. Thanks, bye.

17 ADAM: Bye."

18 [Tape recording ends]

19 Q BY MR. WILLIAMS: So, Mr. VanOpDorp, there was
20 several references to people in this tape recording.
21 One was a reference to a "Jeff." Who is Jeff?

22 A Jeff would have been a project supervisor.

23 Q Would Jeff's last name have been Dunleavy?

24 A Yes, Dunleavy.

25 Q And then there was a reference to a "Pickles." Who

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 is Pickles?

2 A It could be Ian Macumber.

3 Q Okay, and who is Ian Macumber?

4 A He is a heavy equipment operator at Needham
5 Excavating.

6 Q Okay. And then there was a reference to a
7 "Brandon." Who is Brandon?

8 A That would be Brandon McKay.

9 Q And who is Brandon McKay?

10 A Also an operator Needham Excavating.

11 Q Okay. And then there was a reference to a "Boo."
12 Who is Boo? I think it is already in the record, but
13 who is Boo to your -- to the best of your knowledge?

14 A That IS Joe's son, Daniel.

15 Q Daniel Needham?

16 A Yes.

17 Q Okay. So, listening to the tape recording that you
18 just had, does the tape -- does the conversation
19 reflected by the tape recording fairly and accurately
20 represent the conversation that you had with Joe Needham
21 on or about March 18th, 2019?

22 A Yes.

23 Q Okay, thank you.

24 MR. WILLIAMS: At this time, Your Honor, General
25 Counsel moves for the admission of General Counsel's

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Exhibit 3, and at the same time, General Counsel
2 requests permission to share the screen for General
3 Counsel's Exhibit 4, which is a transcript, just to let
4 people see the --

5 **(General Counsel's Exhibits 3 and 4, marked for**
6 **identification.)**

7 JUDGE STECKLER: It will take some time for the
8 parties to review the transcript in General Counsel's
9 Exhibit 4. Can you do that on a break, and we will get
10 back to whether we can -- we will get back on General
11 Counsel's Exhibit 4 specifically after lunch or
12 something.

13 At this time, though, objections on General
14 Counsel's Exhibit 3?

15 MR. WRIGHT: Your Honor, no objection, but just so
16 you know, I was following along with the transcript as
17 the tape was playing. Outside of a few disagreements
18 over exclamation marks being in spots where it didn't
19 really seem like they were appropriate, we don't have
20 any objection to the accuracy of the transcript.

21 JUDGE STECKLER: Okay.

22 Ms. LaRose?

23 MS. LaROSE: No objection, Your Honor.

24 JUDGE STECKLER: What about General Counsel's
25 Exhibit 4? Did you also review that?

1 MS. LaROSE: Yes, ma'am.

2 JUDGE STECKLER: Hearing no objections to either,
3 GC Exhibit 3 and GC Exhibit 4 are admitted then.
4 **(General Counsel's Exhibits 3 and 4, received into**
5 **evidence.)**

6 MR. WRIGHT: I guess, Your Honor, I would just ask
7 if -- if we can have any foundation as to how the
8 transcript was created? I am not disputing that, but I
9 think it would be helpful.

10 JUDGE STECKLER: Mr. Williams, do you have that
11 information, because usually that is not done by the
12 individual.

13 MR. WRIGHT: No. No. I believe the Union prepared
14 the transcript.

15 JUDGE STECKLER: Ms. LaRose, do you know who
16 transcribed for you?

17 MS. LaROSE: Yes, one of the clericals in my
18 office, Your Honor, listened to the recording and
19 transcribed it. I think the General Counsel -- Counsel
20 for the General Counsel is introducing it more in the
21 nature of a demonstrative exhibit, so for the key parts,
22 I think it makes sense for Your Honor to listen to the
23 recording, itself, just to verify that it is correct.
24 But having looked at it myself, I think I agree with Mr.
25 Wright that it is largely accurate as it relates to the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 recording.

2 JUDGE STECKLER: Okay, thank you.

3 Any --

4 MR. WRIGHT: With that, Your Honor -- no, I was
5 just going to say with that explanation from Ms. LaRose,
6 I have no objection to 3 or 4, if 4 is the transcript.

7 JUDGE STECKLER: Okay. General Counsel's Exhibit 3
8 and 4 are admitted.

9 Mr. Williams?

10 Q BY MR. WILLIAMS: Yes, Mr. VanOpDorp, directing
11 your attention to March 29, 2019, what, if anything
12 happened on that day that you can recall?

13 A I'm not recalling right now.

14 Q Did you -- do you recall having a conversation with
15 Joe Needham about employees complaining after the March
16 18th -- March 18th, 2019 discussion?

17 A I am drawing a blank right now. I am drawing a
18 blank right now.

19 JUDGE STECKLER: Okay. Well, if you remember
20 later, let us know.

21 Mr. Williams?

22 Q BY MR. WILLIAMS: Okay, directing your attention to
23 April the 11th, 2019, do you remember what, if anything,
24 happened on that date?

25 A That -- that would have been the day that we had a

1 Group Meeting at the Needham Excavating office in
2 Walcott. That would have been me, myself, Nick, Joe,
3 Aaron Hamilton, and Tracey Marshall, and that was the
4 day that I was -- that was the first day that I put on
5 my Local 150 sticker -- well, the sticker on my truck,
6 and I also wore a sweatshirt with the 150 on my chest
7 and on my back.

8 Q Okay, and what, if anything, happened during this
9 meeting?

10 A Basically they wanted to have a Group Meeting to
11 see what the problems were, and -- between the company
12 guys -- between the guys in the company, and try to
13 figure out what all of the problems were between us, and
14 basically the conversations were, you know, I thought I
15 personally got lied to. My big concern about the
16 financial -- being a financial puller member after we
17 got de-certified out of the union, and then also, the
18 benefits package that they were offering us was not what
19 they told us was going to be for the health benefits, so
20 I was very -- I was voicing my concerns about the
21 benefits and the financial puller also.

22 Q When you say "voicing your concerns," what did you
23 say?

24 A I basically called them out and I said that I
25 thought they were lying to me about all of the things

1 that they said they was going to give us when we went
2 non-union. One was the, like I said, the financial --
3 yeah, I basically said that they were lying to us, and
4 they weren't holding up their end of the deal on what
5 was going on with that stuff.

6 JUDGE STECKLER: Mr. VanOpDorp, I want to kind of
7 take you back to 2017.

8 When were these promises made compared to the
9 election?

10 THE WITNESS: After the election.

11 JUDGE STECKLER: Okay. You may continue, Mr.
12 Williams.

13 MR. WILLIAMS: Thank you.

14 Q BY MR. WILLIAMS: Okay, and what -- what else did
15 you say during this conversation that you recall?

16 A I voiced all of the concerns, and basically they
17 told me that there was nothing that they could do about
18 the financial section of it, because they -- Joe was
19 basically saying that they would do what they want to
20 do, and they don't follow the laws and all of that, so
21 he could do nothing about it. He got told that --
22 Stanley told him about it, and it never went through,
23 so, you know, I guess that means that we all got lied
24 to, but...

25 Also, like I said, they -- they mentioned that the

1 health benefits would be just as good or better than
2 Local 150's, and -- when it come to, when we finally
3 started using our benefits, me and my family, there were
4 nothing close to the benefits that I had with the Local.

5 Q And did anyone, Joe or anyone, respond to that
6 statement?

7 A I believe -- yeah, Joe said that he thought that
8 they could -- that they offered us the best they could
9 by at that time, which then I -- there was also the
10 other guys in the room there, Tracey and Aaron, and they
11 asked Tracey and Aaron if that is what they said, and no
12 one would back me up saying that it was just as good or
13 better than Local 150's benefits, health benefits.

14 Q Okay. Was anything else said during this meeting
15 that you can recall?

16 A Yeah, basically, I mean, between that and I know --
17 I know it was a long meeting, but that is the main
18 points that I remember.

19 Q Did Joe, Joe Needham, or any -- any of the
20 management representatives say they were going to
21 rectify the situation?

22 A Yes. Yeah, he did -- he did offer to, you know,
23 reimburse what was -- what would be the proper for
24 medical bills for -- what's that called? Like
25 deductibles; he did offer to make that right with me, if

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 that was -- you know, he was said he was going -- it was
2 just as good or better than 150, so he offered to me to
3 make it up, the deductibles that 150 would have.

4 Q Okay, and when you say "he," who is he?

5 A Joe, Joe Needham.

6 Q Okay. And did he -- did he just make mention of
7 you, or was it you and the other employees?

8 A At least me and the two other guys that were in
9 there, Tracey and Aaron.

10 Q And who is Tracey?

11 A Tracey Marshall would be a heavy equipment
12 operator.

13 Q And who -- who is Aaron?

14 A Aaron is also another heavy equipment operator.

15 Q And did you record this conversation?

16 A I did.

17 Q And how did you tape record it, or how did you
18 record it?

19 A With the same recording device that I had earlier,
20 or for the phone call also.

21 Q Okay, so in addition to yourself, Tracey Marshall,
22 and Aaron Hamilton, just to be clear, who else was in
23 this meeting?

24 A Nick Needham and Joe Needham.

25 Q Okay.

1 MR. WILLIAMS: At this time, Your Honor, General
2 Counsel would like to share General Counsel's Exhibit 5
3 which is the recording of this conversation on April
4 11th, 2019.

5 **(General Counsel's Exhibit 5, marked for**
6 **identification.)**

7 JUDGE STECKLER: Okay --

8 MR. WRIGHT: Your Honor?

9 JUDGE STECKLER: Yes?

10 MR. WRIGHT: I have one question -- a couple
11 things.

12 Mr. Williams, I forget, how long is this next --

13 MR. WRIGHT: So here's -- here's the -- here's the
14 situation, Your Honor, and it depends on how the parties
15 want to handle this. This recording is an hour and
16 twenty -- a little bit over an hour and twenty-two
17 minutes long, so what -- what -- working with the Union,
18 what we decided to do is have -- is play parts of the
19 tape in three sections. Everybody -- I mean, the
20 recording and the transcript have been on SharePoint for
21 several days now, and everybody has access to that, and
22 then move -- do just like we did before with the March
23 18th, 2018 tape recording, have him testify about that,
24 and then also admit the transcript. If the parties
25 don't want to do that, then we will have -- I guess we

1 will just sit here for an hour and twenty-two minutes
2 and listen to this tape.

3 JUDGE STECKLER: Well, let me ask --

4 MR. WILLIAMS: Judge --

5 JUDGE STECKLER: -- what is the exhibit number of
6 the transcript?

7 MR. WILLIAMS: General Counsel's Exhibit -- it is
8 going to be General Counsel's Exhibit 5 for the
9 recording, and General Counsel's Exhibit 6 for the
10 transcript.

11 **(General Counsel's Exhibit 6, marked for**
12 **identification.)**

13 JUDGE STECKLER: And the transcript covers the
14 entire hour and twenty-two minutes --

15 MR. WILLIAMS: It does.

16 JUDGE STECKLER: -- correct?

17 MR. WILLIAMS: It does.

18 JUDGE STECKLER: And it identifies all of the
19 different people --

20 MR. WILLIAMS: It does.

21 JUDGE STECKLER: -- as they spoke.

22 MR. WILLIAMS: It does.

23 JUDGE STECKLER: It is 11:20 here, 12:15 on the
24 East Coast. Do we want to take lunch and have people
25 listen to the tape, while we are doing that, if they

1 haven't heard it already?

2 MR. WRIGHT: Your Honor, that would be Respondent's
3 preference, to just listen to the whole tape, and that
4 way, we can follow along with the transcript as we did
5 with the last one, and potentially, you know, you can
6 admit that at that time, and also just to provide just
7 whatever context might be relevant to the entire phone
8 call, to who was there at that time.

9 JUDGE STECKLER: Okay, I -- yeah, I don't -- I
10 don't want to play it -- it into the record, but if it
11 is acceptable to everybody with the transcript, then we
12 can admit. Is that suitable?

13 MR. WILLIAMS: That is fine with General Counsel,
14 Your Honor.

15 MR. WRIGHT: Judge, my understanding -- your
16 preference is correct that we -- that we go off the
17 record, everyone listen to it over an extended lunch
18 period, and then come back and -- and General Counsel
19 can move it into the record.

20 JUDGE STECKLER: Right, right, and I won't listen
21 to it until I get the final record, but if everybody
22 agrees to it, then I can -- this is not something I need
23 Mr. VanOpDorp to testify regarding credibility, so we
24 can do that.

25 Okay, Ms. LaRose, are you in agreement with this?

1 MS. LaROSE: Yes, Your Honor.

2 JUDGE STECKLER: Thank you.

3 Okay, I have got 11:15 Central. Let's make it
4 about -- will 12:45 be sufficient time to come back,
5 Central time?

6 MR. WRIGHT: I think so, Your Honor. I -- just one
7 issue. I want to make sure -- Stan, do you have access
8 to the SharePoint?

9 I had an issue come up this morning where I lost
10 access to our SharePoint, so I need to get -- to talk
11 about that.

12 JUDGE STECKLER: Okay, let's make it 1:00 Eastern
13 then -- 1:00 o'clock Central. Yes, 1:00 Central, 2:00
14 Eastern, and if there are problems we will check in
15 before we come back on the record. How's that?

16 MR. WRIGHT: That should be fine. Hopefully we can
17 get it by then.

18 JUDGE STECKLER: Okay.

19 MR. WRIGHT: Thank you, Your Honor.

20 JUDGE STECKLER: In that case, we will be off the
21 record until 1:00 o'clock Central, 2:00 Eastern.

22 Mr. VanOpDorp, before you go, please do not discuss
23 your testimony with anybody during this break. Get up,
24 move around, have lunch, but just don't discuss.

25 THE WITNESS: Yes, ma'am.

1 JUDGE STECKLER: Okay, thank you.

2 THE WITNESS: Thank you.

3 JUDGE STECKLER: Off the record.

4 *[Off the record]*

5 THE COURT REPORTER: We are on.

6 JUDGE STECKLER: Good afternoon.

7 I hope everybody has had a good lunch.

8 During the period right before we came back on the
9 record, we have had some discussion about the transcript
10 and its accuracy. As I understand it, the parties do
11 not object to entering the recording into evidence,
12 General Counsel's Exhibit 5. Is that correct?

13 MR. WRIGHT: *[No response]*

14 JUDGE STECKLER: Okay, Mr. Wright is saying yes, if
15 you are nodding your head.

16 MR. WRIGHT: That's right, Judge.

17 JUDGE STECKLER: And Ms. LaRose?

18 MS. LaROSE: No objection.

19 JUDGE STECKLER: Okay, General Counsel's Exhibit 5
20 is admitted.

21 **(General Counsel's Exhibit 5, received into evidence.)**

22 JUDGE STECKLER: The trouble part is General
23 Counsel's Exhibit 6. Respondent has identified some
24 inaccuracies to date with the transcript, not
25 necessarily anybody's fault, but we do need to -- we

1 have discussed how to handle this, and what we have
2 decided is that Respondent will come up with a list of
3 places in the transcript where the voices are, and where
4 the -- what it finds to be different from the tape to
5 the transcript that was made, and then will notify
6 everybody, the parties, of that. So what we might have
7 in the end is GC-6 as modified as Respondent-X.

8 So, that is the plan right now for General
9 Counsel's Exhibit 6, and so we can continue with the
10 rest of Mr. VanOpDorp's examination.

11 MR. WILLIAMS: Thank you.

12 Q BY MR. WILLIAMS: Mr. VanOpDorp, do you remember
13 having a discussion with Curt McKinley about previous
14 work performed at a Coca Cola warehouse in Walcott,
15 Iowa?

16 A Yes.

17 Q And when did that conversation take place?

18 A That would have been March 29th, 2019.

19 Q And what was the discussion between you and Curt
20 McKinley?

21 A That was when I was getting ready to -- we were
22 getting a game plan for our day with a few of the other
23 guys. Curt pulled up and basically took over with what
24 was our plan for the day. He -- I got frustrated with
25 him, and ended up -- the other guys took off, so me and

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Curt started having an argument.

2 I told him, you know, I -- basically, I was
3 frustrated with how the upper management was running the
4 guys, and that's why all of the guys were unhappy, and
5 nobody really wanted to be working there at the time.
6 We were all just upset and disgruntled. So then I, you
7 know, voiced my opinion about how I was not getting what
8 we were promised when we went non-union, with the
9 benefits and all of that again, with the medical
10 benefits. Then, basically he -- he left, and then later
11 in the day, Nick Needham showed up. I voiced it to him
12 again out there, and the same complaints. We -- then
13 later in that day, Joe Needham made a phone call to me,
14 and I voiced that -- those same concerns to me, and then
15 he basically told me to start thinking for myself and to
16 shut up and go back to work, and you know, "If you want
17 to get back to the Union, I can make a call to Marshall
18 Douglas," if that was what I wanted, and I told him -- I
19 told him, yeah, that was basically about the end of the
20 conversation that I remember.

21 Q Okay, when you said that he could call Marshall
22 Douglas with the Union, for what purpose?

23 A I took it as being reinstated back into the Union.

24 Q Okay. Do you remember when this conversation took
25 place --

1 A It was --

2 Q -- what time of the day?

3 A In the morning was the argument with Curt. Later
4 in the morning, that is when Nick come out, and probably
5 before lunch, I got the call from Joe.

6 Q Okay.

7 JUDGE STECKLER: Before you continue, Mr. Williams,
8 I think we forgot to ask -- we mentioned this before we
9 went back on the record, is that you wanted to ask Mr.
10 VanOpDorp whether GC-5, the recording that was an hour
11 and twenty-two minutes long, was that a true and
12 accurate copy?

13 MR. WILLIAMS: Okay.

14 Q BY MR. WILLIAMS: So, Mr. VanOpDorp, going back to
15 the tape recording of the meeting on April the 11th,
16 2019, is -- does that recording that -- well, does that
17 recording fairly and accurately represent the
18 conversations that took place between you, Joe, and Nick
19 Needham, as well as with Aaron Hamilton and I forgot the
20 other person -- Tracey Marshall and some other employees
21 at the time?

22 A Yes.

23 Q Okay.

24 JUDGE STECKLER: Okay, I'm sorry, Mr. Williams, for
25 interrupting your flow.

1 MR. WILLIAMS: Okay, no problem.

2 Can I share my screen, Judge?

3 JUDGE STECKLER: Please.

4 Q BY MR. WILLIAMS: Okay, can you see this screen,
5 Mr. VanOpDorp?

6 A Yes.

7 **(General Counsel's Exhibit 7, marked for**
8 **identification.)**

9 Q BY MR. WILLIAMS: Do you recognize -- what is that
10 a picture of?

11 A That is the International Union of Operating
12 Engineers Local 150's insignia sticker on my truck.

13 Q Okay, that is your truck?

14 A Yes.

15 Q When did you -- when did you place that sticker,
16 that Local 150 sticker on your truck?

17 A That picture would be -- would have been the night
18 before the April 11th meeting, so that would have been
19 on 4-10 of '19.

20 Q Okay, and so this truck -- do you drive this
21 particular truck to -- at the time, were you driving
22 this particular truck to Needham Excavating, Inc. every
23 day?

24 A Yes.

25 Q Okay, and where would you park this vehicle?

1 A On any jobsites, or if we were meeting at the shop
2 or I had to go to the shop for anything, I would park it
3 there -- in the parking area there where they pull up.

4 Q Okay.

5 MR. WILLIAMS: Your Honor, at this time, I move for
6 the admission of General Counsel's Exhibit 7.

7 MR. WRIGHT: No objection.

8 JUDGE STECKLER: Ms. LaRose?

9 MS. LaROSE: No objection, Your Honor.

10 JUDGE STECKLER: General Counsel's Exhibit 7 is
11 received.

12 **(General Counsel's Exhibit 7, received into evidence.)**

13 Q BY MR. WILLIAMS: I am going to show you now what's
14 been marked for identification as General Counsel's
15 Exhibit 8(a).

16 **(General Counsel's Exhibit 8(a), marked for**
17 **identification.)**

18 Q BY MR. WILLIAMS: Do you recognize that document?

19 A Yes.

20 Q And what is it?

21 A This would be an e-mail from Nick Needham to
22 myself.

23 Q Okay, and what -- what does it involve?

24 A This is when they are threatening discipline for me
25 for -- when they say that I was putting -- that I was

1 conducting Union business on company time, and that they
2 would be disciplining me if I would continue to do so on
3 their company time, conducting the union business.

4 Q Okay. While you -- while you were working -- prior
5 to the April 19th, 2019 date, which is the date of this
6 e-mail, while you were working at Needham Excavating,
7 Inc., were you and there employees allowed to talk about
8 non-work-related issues during working time?

9 A Yes.

10 Q And what type of -- what type of subjects were you
11 talking about?

12 A Well, I mean, it could be from riding motorcycles
13 and dirt bikes to softball games, snowmobiling. I mean,
14 just any normal conversation the guys -- that we were
15 all interested in.

16 Q Okay. And to the best of your knowledge, were you
17 ever disciplined or sent an e-mail for discussing non-
18 work-related issues then?

19 A No.

20 Q Did you respond to -- to Nick's e-mail dated April
21 19th, 2019?

22 A I did.

23 Q Okay, I am going to show you what's been marked as
24 General Counsel's Exhibit 8(b).

25 **(General Counsel's Exhibit 8(b), marked for**

1 identification.)

2 Q BY MR. WILLIAMS: Do you recognize that document?

3 A Yes.

4 Q And what is it?

5 A This is my response back to Nick Needham on the
6 previous e-mail about the discipline, and basically -- I
7 was just saying how we could have conversations about
8 anything besides non-work-related things, and -- so,
9 yeah, I am just saying if somebody wants to ask me about
10 my stickers or any of the Union business, the
11 organizing, that I was going to answer their questions.

12 MR. WILLIAMS: At this time, Your Honor, General
13 Counsel moves for admission of General Counsel's Exhibit
14 8(a) and 8(b).

15 JUDGE STECKLER: Any objection?

16 MR. WRIGHT: No objection from Respondent.

17 JUDGE STECKLER: Ms. LaRose?

18 MS. LaROSE: No objection, Your Honor.

19 JUDGE STECKLER: Okay, General Counsel's Exhibit
20 8(a) and 8(b) are admitted.

21 (General Counsel's Exhibits 8(a) and 8(b), received into
22 evidence.)

23 [Long pause]

24 JUDGE STECKLER: Mr. VanOpDorp, I'm sorry to bring
25 this up now, because I should have done it when we just

1 got back from lunch, but you realize you are still under
2 oath, correct?

3 THE WITNESS: Yes.

4 JUDGE STECKLER: And during the lunch period, you
5 did not discuss your testimony with anybody?

6 THE WITNESS: No.

7 JUDGE STECKLER: Did you review any documents
8 during that time?

9 THE WITNESS: No.

10 JUDGE STECKLER: Thank you.

11 I'm sorry, General Counsel.

12 Q BY MR. WILLIAMS: Now, directing your attention to
13 July 1st, 2019, what, if anything, happened on that day
14 that you can recall?

15 A That would have been the day that I was working on
16 Dan Dolan's project.

17 Q Okay. Were you working alone?

18 A No.

19 Q Who -- who were you working with?

20 A I was working with Chad Havill and the laborer, Joe
21 Neal.

22 Q Okay, and what type of work were you supposed to do
23 then?

24 A We were installing sewer mains and laterals for a
25 new townhouse addition.

- 1 Q Okay, where is this project located?
- 2 A That would be in Davenport.
- 3 Q Iowa?
- 4 A Iowa, yes, Davenport, Iowa.
- 5 Q And on July the 1st, 2019, what time did you arrive
- 6 there?
- 7 A I arrived between 6:15 and 6:20.
- 8 Q A.M.?
- 9 A Yes.
- 10 Q And was there anybody else -- when you first
- 11 arrived, was there anybody else present on the jobsite?
- 12 A No.
- 13 Q Okay. And then after you arrived, who -- who
- 14 appeared on the jobsite? Was it Joe Neal or was it Chad
- 15 Havill next?
- 16 A Chad Havill.
- 17 Q And what time did he get there?
- 18 A Around 6:30.
- 19 Q And how long did you work on that jobsite?
- 20 A Ten hours.
- 21 Q And what time did you leave the jobsite?
- 22 A It would have been around 4:40, 4:45 p.m.
- 23 Q Okay, and when did Chad -- did Chad Havill leave
- 24 before you?
- 25 A Yes.

1 Q And when did he leave?

2 A I would say 4:30, around that time.

3 Q Okay. And do you normally complete a timecard to
4 reflect the time that you perform work?

5 A I do.

6 Q Okay. And did you fill out a timecard for the week
7 starting July 1st, 2019?

8 A Yes.

9 MR. WILLIAMS: Your Honor, can I share my screen?

10 JUDGE STECKLER: Yes, go ahead.

11 MR. WILLIAMS: Thank you.

12 *[Long pause]*

13 Q BY MR. WILLIAMS: This is General Counsel's
14 Exhibit 11. Do you recognize that?

15 A Yes.

16 Q And what is that?

17 A That would be our timecards that we would fill out
18 for the day and for the week.

19 Q Okay, so the top line is for Monday. It looks like
20 7-1, so therefore, July 1st?

21 A Yes.

22 Q 2019?

23 A Yes.

24 Q Okay, and it says "Code No. 80." What does that
25 mean?

1 A Those are our cost codes that we use for the -- for
2 the office use. That would be what we were installing
3 or the task we were performing for the day, which 80
4 would be sewer, sanitary sewer installation.

5 Q Okay, and then it has "Description/Material."

6 A Yeah.

7 Q And that says "Sewer?"

8 A Yes.

9 Q Okay. And does that describe the type of work you
10 performed on that jobsite?

11 A Yes.

12 Q Okay. The next seems to be "Categories/Machine."
13 What did you put down, because there is two numbers
14 here.

15 A Mine would be in the black writing.

16 Q And so what did you put down?

17 A 210.

18 Q And what is 210?

19 A That would be just a machine that designates a
20 number to a machine, so that would be what machine I was
21 running that day.

22 Q Do you remember what type of machine you were
23 running on July the 1st, 2019?

24 A It was a track-hoe. I cannot -- I don't remember
25 which one of their track-hoes it was, but it was between

1 a John Deere 330 or a Case 240 excavator.

2 Q Okay, and so what is this -- underneath the 210, is
3 272. Did you put 272 right under that 210?

4 A I did not.

5 Q Okay. And beside where it says, "Machine," it says
6 "Regular," and under that category, it has "8." Did you
7 place the 8 there?

8 A Yes.

9 Q And then the next category is "OT," which that
10 stands for overtime?

11 A Yes.

12 Q And you put two hours?

13 A Yes.

14 Q And -- so when -- when are employees supposed to --
15 let me -- strike that...

16 Are employees -- what are employees supposed to do
17 with the timecards after they fill them out?

18 A Normally we would -- we had a folder in the office
19 at Needham there, and we would turn in all of our
20 paperwork along with our timecards once a week, and it
21 would be for the previous week, along with all of our
22 receipts and timecards and things like that.

23 Q Okay, would you turn your cards in, your timecards
24 in on a particular day of the week?

25 A We normally would do it on Monday morning.

1 Q Okay, so every Monday morning, you are putting your
2 timecard in the folder?

3 A Yes.

4 Q Okay. Now, with respect to this particular
5 timecard, did you follow the same process?

6 A No, I did not.

7 Q Why not? What happened?

8 A Curt McKinley showed up on the jobsite and
9 requested me to finish -- to finish up my timecard so
10 that he could take it to the office.

11 Q When did he show up on the jobsite?

12 A It would have been in the afternoon, about, I would
13 say, maybe 11:00 or 12:00, right at lunchtime.

14 Q Okay, so him showing up at the jobsite requesting
15 your timecard, has that happened before?

16 A No.

17 Q Okay.

18 [Long pause]

19 JUDGE STECKLER: About what time of the day did he
20 show up, Mr. VanOpDorp?

21 THE WITNESS: I mean, between -- between like maybe
22 11:00 and 12:00.

23 JUDGE STECKLER: And what time would you normally
24 turn them in if you were at the office?

25 THE WITNESS: I mean, it could be the morning of

1 Mondays or Monday nights.

2 JUDGE STECKLER: Okay. I'm sorry to interrupt, Mr.
3 Williams.

4 MR. WILLIAMS: No problem.

5 [Long pause]

6 Q BY MR. WILLIAMS: Okay, at some point, do you
7 recall the International Union of Operating Engineers
8 Local 150 filing a representation petition?

9 A Yes.

10 Q Do you remember when it was filed?

11 A I believe it was June 28th, maybe.

12 Q Could it have been June 21st?

13 A Yeah, June 21st.

14 Q Do you remember what year?

15 A That would be '19.

16 Q And do you know whether or not there was a pre-
17 election hearing conducted pursuant to the filing of
18 that representation petition?

19 A Yes.

20 Q Okay. Do you remember when that pre-election was?

21 A July 2nd of 2019.

22 Q Okay, and did you attend that hearing?

23 A I did.

24 JUDGE STECKLER: Were you subpoenaed by the Union
25 to appear there?

1 THE WITNESS: I believe I was not. No, yeah, I did
2 have a subpoena for that.

3 Q BY MR. WILLIAMS: So, were you -- were you supposed
4 to have testified on the Union's behalf at that time?

5 A Yes.

6 Q Okay. Did you testify during that pre-election
7 hearing?

8 A No.

9 Q Do you recall whether Joe Needham was present at
10 this pre-election hearing?

11 A Yes.

12 Q How do you know that?

13 A He -- I seen him and he seen me.

14 Q Okay. Was there any other representative,
15 managerial representative of Needham Excavating, Inc.
16 present at this pre-election hearing?

17 A No, I believe it was just him and Stanley Niew.

18 Q Okay.

19 [Long pause]

20 Q In addition to yourself, were there any other
21 employees of Needham Excavating, Inc. present at that
22 pre-election hearing?

23 A Yes.

24 Q Who?

25 A It would be myself, Brett Gripp, Spencer Werthmann,

1 and then there was Brandon McKay and Amber Nielson.

2 Q Okay, and who is Brett Gripp?

3 A Brett Gripp was an employee of Needham.

4 Q Do you know whether or not he supported the Union's
5 organizing effort?

6 A Yes.

7 Q And how do you know that?

8 A Me and him had conversations about it.

9 Q Do you know when you started having conversations
10 with him about organizing Needham Excavating, Inc.?

11 A It would have been in the -- in mid-March of that -
12 - of 2019.

13 Q Okay. And do you know if he spoke to other
14 employees about joining the Union?

15 A Yes.

16 Q And how do you know that?

17 A Me and him would have conversations about it.

18 Q Okay. Do you know if he testified during the pre-
19 election hearing?

20 A He did not.

21 Q Okay. Now, directing your attention to July 8,
22 2019, what, if anything happened on that day that you
23 recall?

24 A That was the day that I got terminated from Needham
25 Excavating.

1 Q Okay, tell us more about that.

2 A That was the day where I got a -- received a text
3 message from Nick Needham saying to report -- for me to
4 report to his office by 3:30 that afternoon, which I was
5 there on time, or maybe a little bit before. I walked
6 into his office and him and Curt McKinley were in there.

7 They first showed me pictures of the 11th Street -
8 Moline project, showing them shoveling concrete and
9 breaking concrete, and going backwards on the project to
10 -- for a pipe that they claim had backfall on it. So --

11 Q Which jobsite?

12 A That would have been the 11th Street - Moline.

13 Q Okay. I'm sorry I interrupted you. Keep going.

14 A And then he also showed me the timecard, claiming I
15 had falsified my time for that July 1st date, and
16 claimed to me that that was stealing from him, and that
17 pretty much charges could be brought against me. So he
18 basically said that that was two reasons why he was
19 going to -- why he was terminating me.

20 He said we will go out to the shop and unload the
21 tools, Needham's tools out of my pickup, and they would
22 come out and help me, which they did.

23 Q Okay. Did -- did you ever tell Curt McKinley and
24 Nick Needham that you only worked 8.5 hours on the Dan
25 Dolan's jobsite, on July 1st, 2019?

1 A No.

2 JUDGE STECKLER: Mr. VanOpDorp, what, if any,
3 conversation did you have while you were unloading your
4 truck, and who was with you at the time?

5 THE WITNESS: Curt and Nick Needham came out there
6 and helped me, and there was also a mechanic, Bill
7 Bouchard that came out and helping me unload my tools,
8 and there -- I don't know, I was pretty upset about it,
9 but I remember just telling them, "Well, I hope you guys
10 have fun with the workforce you have now," and, I mean,
11 I think I was just frustrated, but I unloaded my tools
12 and left.

13 JUDGE STECKLER: What, if anything, did you say
14 about others and their timecards?

15 THE WITNESS: I called -- I told them to be
16 watching everybody's timecards if they were watching
17 mine.

18 JUDGE STECKLER: Okay, before this had occurred,
19 had they discussed with you anything about your
20 timecard; were you aware of this?

21 THE WITNESS: No.

22 JUDGE STECKLER: All right, Mr. Williams, you may
23 continue.

24 MR. WILLIAMS: Thank you.

25 JUDGE STECKLER: I am probably screwing up your

1 order.

2 MR. WILLIAMS: No, that's -- that's okay.

3 Q BY MR. WILLIAMS: Did you -- at any point, did you
4 ever tell them that you -- that you falsified your
5 timecard?

6 A No.

7 Q At any point in time, did you ever say, and let me
8 finish, and think about it before you answer me, did you
9 ever tell them that they need to check everybody's
10 timecards because you weren't the only one cheating on
11 your -- on your timecard?

12 A No.

13 MR. WILLIAMS: Could I have one minute, Your Honor,
14 to make sure I have gone through my questions?

15 JUDGE STECKLER: Yes, let's go off the record for
16 that minute.

17 *[Off the record]*

18 JUDGE STECKLER: Okay, we are back on the record.
19 Mr. Williams?

20 MR. NIEW: Excuse me, Your Honor. Jeff went for a
21 comfort break. He will be right back.

22 JUDGE STECKLER: Oh, I'm sorry.

23 We will go off the record until he returns.

24 *[Off the record]*

25 JUDGE STECKLER: Okay, Mr. Williams?

1 MR. WILLIAMS: Yes, Your Honor, at this time, I
2 have -- General Counsel has no further questions for Mr.
3 VanOpDorp.

4 JUDGE STECKLER: Ms. LaRose?

5 MS. LaROSE: Yes, I have some questions, Your
6 Honor.

7 DIRECT EXAMINATION

8 Q BY MS. LaROSE: Mr. VanOpDorp, I think the Judge
9 asked you a question in relation to the healthcare
10 coverage, running out of your Union healthcare coverage,
11 and the financial core deal. She asked you when these
12 promises were made by the Company, and you said after
13 the election.

14 A Yes.

15 Q Prior to the election, what did the Company say to
16 you in terms of what you might receive following a non-
17 union -- I'm sorry, following a "no" vote to the Union?

18 A They basically told me that they couldn't offer me
19 anything at the time because of the election, but they
20 told me, just -- that I would be taken care of, and you
21 know, I had been there a long time, so there was nothing
22 to worry about.

23 Q And then --

24 JUDGE STECKLER: Who said that to you, Mr.
25 VanOpDorp?

1 THE WITNESS: I believe it would have been Joe
2 Needham.

3 Q BY MS. LaROSE: And then --

4 MS. LaROSE: I'm sorry, Your Honor.

5 JUDGE STECKLER: No, I was going to say to go
6 ahead.

7 MS. LaROSE: Okay.

8 Q BY MS. LaROSE: And then Mr. Williams asked you a
9 question about the reference to -- by Joe Needham to
10 calling Marshall Douglas if you wanted to get back in
11 the union, or words to that effect. Do you remember
12 that testimony?

13 A Yes.

14 Q And you said that he would be reinstated to the
15 Union; do you recall that testimony?

16 A You --

17 Q I'm sorry, he said that you would be reinstated to
18 the Union.

19 A Yes.

20 Q That was your interpretation.

21 A Yes.

22 Q Okay, and that included, but didn't mean that you
23 could continue to work at Needham Excavating and be
24 union; have I got that right?

25 A Yes.

1 Q Okay. Were you -- during your time at Needham
2 Excavating, were you the only operator that was working
3 there?

4 A No.

5 Q Okay. And...

6 MS. LaROSE: Jim, would you mind enlarging this so
7 I can see it a little bit better?

8 Q BY MS. LaROSE: Who else was an equipment operator?

9 A It would have been Tracy Marshall and Hamilton,
10 Dave Carter, Brandon Harvey, and then we had myself, and
11 then -- I think I am forgetting a few here.

12 Q Brandon McKay?

13 A Oh, yeah, Brandon McKay.

14 Q Ian Macumber?

15 A Yeah, Ian Macumber.

16 Q Chad Havill?

17 A Chad Havill, yeah. I am forgetting a lot.

18 Q That's all right. What about Spencer?

19 A Yes.

20 Q And for the record, that is Spencer Werthmann?

21 A Yes.

22 Q Bret Gripp?

23 A Yes.

24 Q Okay, did Curt McKinley ever operate equipment to
25 do building or construction work?

1 A No.

2 Q What types of heavy equipment does Needham
3 Excavating own?

4 A Excavators, bulldozers, dirt scrapers, mini-
5 excavators, track -- skid loaders, bobcats.

6 Q And what kinds of equipment did you run?

7 A Mainly I was on the excavators, a little bit on the
8 dozers.

9 Q Okay. And what time did you start work generally
10 in the morning?

11 A Start time was 7:00.

12 Q Okay, and where did you report to work?

13 A The majority of the time, the jobsites.

14 Q Okay. And how did you know where to go?

15 A There we had an app on our phones called
16 ScheduleBase.

17 Q Uh-huh.

18 A And that would basically have the list of all of
19 the employees, of operators, laborers, truck drivers,
20 and then it would have your name there. You could see
21 everybody and where they were going, what machines they
22 would have, or where machinery was going to, and then
23 what job you were going to be on for that day.

24 Q Okay, and were these -- were the employees listed
25 in -- with their job classifications?

1 A Yes.

2 Q So, were -- what groups of employees did the
3 company have within that ScheduleBase?

4 A They had groups -- the operators, group for
5 laborers, and then truck drivers.

6 Q Okay. And how would you -- so for ScheduleBase,
7 how did you get to that application?

8 A On -- on my phone.

9 Q And I...

10 MS. LaROSE: Jim, I am going to need you to pull up
11 Exhibit -- Union's Exhibit 3, please.

12 **(Union's Exhibit 3, marked for identification.)**

13 MS. LaROSE: Thank you.

14 Let the record reflect that I have pulled up on the
15 screen Union's Exhibit No. 3.

16 Q BY MS. LaROSE: Could you please identify that
17 document for us, Adam, and if you need to see it on a
18 bigger screen, just let us know.

19 A I can see it good.

20 This would be a screenshot of the ScheduleBase app
21 on my phone. It is for the laborers that we had hired
22 at the time.

23 Q So this is one of those groupings that I was
24 talking about earlier, and this happens to be a grouping
25 of laborers. Have I got that right?

1 A Yes.

2 Q Okay, and can you tell me what -- well, first of
3 all, where did this screenshot come from?

4 A It was on my phone.

5 Q Okay, and can you tell us what date this screen
6 shot was made?

7 A It would have been March 12th, 2019.

8 Q In other words, the date that is on this
9 ScheduleBase application?

10 A Yes.

11 Q Okay, thank you.

12 MS. LaROSE: Your Honor, I am going to move Union's
13 Exhibit 3.

14 JUDGE STECKLER: Any objections?

15 MR. WILLIAMS: No objections, Your Honor.

16 MR. WRIGHT: No objection, Your Honor.

17 JUDGE STECKLER: Okay, Union's Exhibit 3 is
18 admitted.

19 **(Union's Exhibit 3, received into evidence.)**

20 MS. LaROSE: And then, Jim, I need you to pull up
21 what's been marked as Union's Exhibit 5.

22 **(Union's Exhibit 5, marked for identification.)**

23 MS. LaROSE: I don't know if...

24 *[Long pause]*

25 Q BY MS. LaROSE: Mr. VanOpDorp, could you please

1 identify this document for us?

2 A This would be also a ScheduleBase screenshot off my
3 phone, and this would be the operators list for the
4 ScheduleBase.

5 Q Okay, and what date was this screenshot taken?

6 A March 12th, 2019.

7 Q Okay, thank you.

8 MS. LaROSE: Your Honor, I am going to move to
9 admit Union's Exhibit 5.

10 MR. WILLIAMS: No objection, Your Honor.

11 JUDGE STECKLER: Respondent?

12 MR. WRIGHT: Your Honor, if I could have just brief
13 voir dire.

14 JUDGE STECKLER: Go ahead.

15 MR. WRIGHT: Thank you.

16 VOIR DIRE

17 Q BY MR. WRIGHT: Is it okay if I call you Adam?

18 A Yes.

19 Q Adam, this Union's Exhibit 5, I just want to be
20 clear, this is not a complete list of the operators that
21 would have been working for Needham at the time, is that
22 correct? Is this just a sample of one day for one crew,
23 or --

24 A Yeah, just a sample.

25 Q Okay, so that is not a complete list of all

1 operators.

2 A No.

3 MR. WRIGHT: Okay, nothing further on that, Your
4 Honor. No objection.

5 JUDGE STECKLER: Union's Exhibit 5 is
6 received.

7 **(Union's Exhibit 5, received into evidence.)**

8 MS. LaROSE: Thank you.

9 CONTINUING DIRECT EXAMINATION

10 Q BY MS. LaROSE: Prior to your termination from
11 Needham, once you were able to see and schedule days,
12 did that change?

13 A Yes.

14 Q And how did it change?

15 A It changed shortly after our April 11th meeting.
16 They changed it to where I could only see myself and
17 nobody else.

18 Q Okay.

19 MS. LaROSE: Okay, Jim, Union's Exhibit 27.

20 **(Union's Exhibit 27, marked for identification.)**

21 *[Long pause]*

22 Q BY MS. LaROSE: I am going to show you what's been
23 marked as Union's Exhibit No. 27. Could you please tell
24 us what you see there, Adam, or please identify this for
25 us, I should say.

1 A This is a screenshot of the ScheduleBase app on my
2 phone.

3 Q Okay.

4 A This is where I can only see myself.

5 Q Okay, and it looks like there is two different,
6 maybe two different screenshots here; is that right?

7 A Yes.

8 Q And what -- are they -- it looks to me like the one
9 screenshot was taken at 2:24 p.m. and the other was
10 taken at 3:05 p.m.; is that correct?

11 A Yes.

12 Q Okay, and on what date was this?

13 A April 12th, 2019.

14 Q Okay, and that has the date after the meeting in
15 the -- in Nick's office with Joe and Tracey Marshall; is
16 that right?

17 A Yes.

18 MS. LaROSE: Your Honor, I am going to move for
19 admission of Union's Exhibit 27.

20 MR. WILLIAMS: No objection, Your Honor.

21 MR. WRIGHT: No objection.

22 JUDGE STECKLER: Union's Exhibit 27 is admitted.

23 **(Union's Exhibit 27, received into evidence.)**

24 JUDGE STECKLER: Mr. VanOpDorp, was that the first
25 time that you can recall seeing only yourself and not

1 the whole team?

2 THE WITNESS: Yes.

3 MS. LaROSE: I am going to return for a minute to
4 the machines that Needham owned.

5 Q BY MS. LaROSE: What do you use a track hoe or
6 excavator to do on Needham's jobs?

7 A We would use them to -- to dig a ditch, to install
8 pipe, and/or tear out old concrete. There is a lot of -
9 - if there is a lot to be hauled out in dump trucks, we
10 use them to put it in dump trucks, use them to load dump
11 trucks.

12 Q What did you use a dozer for?

13 A Dozers would be used for the grading of the site,
14 for the parking lots, building pads. Smooth -- you
15 know, if you get loads of rock, knocking the rock down
16 to put the grades for what we needed to do.

17 Q Okay. And skid-loaders and mini-excavators?

18 A Skid-loaders would be for the smaller projects
19 and/or clean-up on jobs, where we are in like tight
20 spaces.

21 Q Is that a smaller piece of equipment?

22 A Are skid-loaders mini-excavators?

23 Q Yes.

24 A No, not --

25 Q Well, I'm sorry, let me -- that question was very

1 poor.

2 They are a smaller piece of equipment than a dozer
3 or a track-hoe, right?

4 A Yes.

5 Q Okay, so they are for working in these tighter
6 areas? Is that right?

7 A Yes.

8 Q Okay, thank you.

9 Scrapers?

10 A Yes.

11 Q What were those -- sorry, go ahead.

12 A They were used on the big dirt jobs that they had
13 for hauling the dirt around and placing it where it
14 needed to be moved around to.

15 Q Do you need a CDL to run any of the equipment that
16 Needham Excavating owns? I'm sorry, the heavy equipment
17 that Needham Excavating owns?

18 A No.

19 Q Do you have a CDL?

20 A No.

21 Q Did any of the equipment operators, to your
22 knowledge, have a CDL?

23 A Yes.

24 Q Who?

25 A To my knowledge, I knew Brandon McKay had one,

1 Aaron Hamilton had one. That is the only two I can come
2 up with right now.

3 Q Okay, and when -- when you were still working for
4 the Company, who was your supervisor?

5 A It would be Nick Needham or Curt McKinley.

6 Q Did the operators usually spend -- did the
7 operators usually spend the entire day at the jobsite?

8 A Mostly, yes.

9 Q Okay, and who else is on these jobsites with you?

10 A Laborers.

11 Q Okay. Prior to your termination, had you noticed
12 some new faces on the job?

13 A Yes.

14 Q Like who?

15 A There was a guy named Tim Hamann and Luke Geiger.

16 Q And what were they doing?

17 A They were trying to operate equipment.

18 Q Okay. And did you raise questions about why these
19 people were suddenly around?

20 A I did to definitely one employee.

21 Q Okay, and who was that?

22 A That would have been Ian Macumber?

23 Q And when was that, roughly?

24 A I mean, that was right there around when they were
25 going to have the election.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay.

2 A I said to Ian, "What are these farmers doing out
3 here?"

4 And he said, "Basically, you know why they are
5 here."

6 Q Was it "basically, you know why they are here," or
7 did he actually say, "You know why they are here?"

8 A "You know why they are here."

9 MR. WRIGHT: Object, Your Honor. Leading.

10 JUDGE STECKLER: I think it is already in, so we
11 will take it and you can argue it, give it the weight it
12 deserves.

13 Q BY MS. LaROSE: And who do you know Tim Hamann to
14 be?

15 A As far as I knew, he was Daniel's neighbor, beer-
16 drinking buddy.

17 Q Okay. And how long has Kenny McAdoo worked at the
18 company?

19 A Before I was terminated, I would say he was there
20 for two years.

21 Q Okay. When did he start working there, do you
22 recall, or do you recall an event when he started
23 working there?

24 A I know he was hired to be out on Needham's concrete
25 recycler.

1 Q Okay, so roughly when the recycling operation was
2 acquired?

3 A Yeah.

4 Q Okay. Did Kenny vote in the de-certification
5 election in 2017?

6 A No.

7 Q And just for the purposes of clarification, my
8 questions are going to Kenny McAdoo. Is that how you
9 understood them?

10 A Yes.

11 Q Okay, thank you.

12 When you were working on the job, how did you get
13 material?

14 A Dump trucks.

15 Q Okay, and how did people -- strike that.

16 How much time did the truck drivers usually spend
17 at jobsites during the day?

18 A I would say, you know, they were hauling rock from
19 the quarry in and out. You know, on a rock haul day,
20 maybe a half hour, but they could also just be dropping
21 off a load or two of gravel or dirt or whatever, and
22 then you wouldn't see them. That would be it for the
23 day.

24 Q Okay.

25 A So I would say a half hour.

1 Q And when you last worked at Needham Excavating, do
2 you remember what you were making per hour?

3 A I believe it was \$37.50.

4 Q Okay, and when was the last time you got a raise,
5 prior to your termination?

6 A That would have been in June. That is when the
7 Union would always have the contracts renewed, and
8 Needham's would always -- that was one of the deals they
9 had with us, is that they would always keep us steady
10 with the Union raises, keep up with the Union raises.

11 Q Okay. Have you heard of an employer called K & K?

12 A Yes.

13 Q What was K & K?

14 A K & K was the mechanics' repair shop.

15 Q Okay, and did K & K service only Needham equipment?

16 A No.

17 Q Okay. K & K had other customers?

18 A Yes.

19 Q Okay, and what -- who worked at K & K?

20 A Bill Bouchard, Jered Nielsen, Amber Nielsen, and
21 Spencer Werthmann.

22 Q Okay, and what were their positions?

23 A Bill and Jered were the mechanics. Spencer would
24 have been the -- I would say the clean-up and shop kid,
25 and Amber would have been the Manager, the Shop Manager.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay. Were Bill and Jered ever in ScheduleBase?

2 A No.

3 Q What about Amber?

4 A Yes, on the truck drivers list.

5 Q When she was performing work as a truck driver for
6 Needham.

7 A Yes.

8 Q Okay. Was Spencer in ScheduleBase?

9 A Yes.

10 Q Was he in ScheduleBase consistently?

11 A Yes.

12 Q Okay, and -- and he was in ScheduleBase -- well,
13 strike that.

14 The mechanics who worked in the K & K shop, what
15 time did they start?

16 MR. WRIGHT: Objection, speculation.

17 JUDGE STECKLER: If you know.

18 THE WITNESS: What was that?

19 JUDGE STECKLER: Do you know what time they
20 started?

21 THE WITNESS: I believe the start time for
22 everybody was 7:00.

23 JUDGE STECKLER: So they were like everybody else?

24 THE WITNESS: Yes.

25 JUDGE STECKLER: How did you know that?

1 THE WITNESS: I guess I just assumed.

2 JUDGE STECKLER: Okay. Ms. LaRose?

3 Q BY MS. LaROSE: Were there occasions when you
4 started -- well, strike that.

5 How often did you see the K & K mechanics at the
6 jobsites?

7 A Only when they were servicing or repairing the
8 equipment.

9 Q Okay. And how many times a year was that, on
10 average?

11 A I'd say ten to fifteen times.

12 Q Okay. And where do they work when they are not at
13 the jobsites?

14 A At the Walcott facility in --

15 MR. WRIGHT: Objection, again. Speculation, Judge.
16 Sorry for the delay in trying to unmute.

17 JUDGE STECKLER: Ms. LaRose, can you establish some
18 foundation about how he knows?

19 MS. LaROSE: Sure.

20 Q BY MS. LaROSE: The K & K shop was adjacent to
21 where Curt -- where Nick Needham has his office; is that
22 right, Adam?

23 MR. WRIGHT: Objection, leading.

24 MS. LaROSE: It is clarification. It is not
25 leading.

1 You made an objection and I am establishing a
2 foundation, so --

3 JUDGE STECKLER: Well, we will save that for the
4 briefs.

5 Go ahead, Ms. LaRose.

6 MS. LaROSE: Thank you.

7 Q BY MS. LaROSE: And on those occasions when you
8 were visiting Needham's office, were you capable of
9 seeing who might be engaged at the K & K facility?

10 A Yes.

11 MS. LaROSE: Your Honor, I think that establishes a
12 foundation.

13 JUDGE STECKLER: Okay, proceed.

14 MS. LaROSE: Thank you.

15 Q BY MS. LaROSE: Were there occasions -- well, let
16 me ask you this...

17 Were there occasions when you actually visited the
18 K & K shop?

19 A Yes.

20 Q Okay, and you were in a position at that point to
21 observe who might have been working there?

22 A Yes.

23 Q And it is based on these observations that you
24 supplied the testimony about who -- where the mechanics
25 were when they were not at jobsites; have I got that

1 right?

2 A Yes.

3 Q Okay. Did the mechanics ever run heavy equipment
4 or trucks on jobsites in furtherance of construction --
5 furtherance of building construction?

6 A No.

7 Q Did any of the people who worked in the K & K shop
8 run heavy equipment regularly?

9 A Yes.

10 Q Who was that?

11 A Spencer Werthmann.

12 Q Anybody else?

13 A No.

14 Q Did you ever see Amber Nielsen operate equipment?

15 A No.

16 Q Was there ever an occasion in ScheduleBase that
17 Amber was operating heavy equipment?

18 A No.

19 Q The timesheets that have come up intermittently in
20 your testimony, Adam, where did those timesheets get
21 turned in to?

22 A Into the shop there, off -- by Nick's office, in
23 the K & K shop, I guess, but also we would have a folder
24 with their names on it that we would put all of our
25 receipts and our trucking tickets and rock tickets and

1 the timecards.

2 Q And I think you testified before that that material
3 would be turned in like once a week?

4 A Yes.

5 Q Okay, so you were stopping by that area at least
6 once a week; is that right?

7 A Yes.

8 MS. LaROSE: Those are all of my questions, Your
9 Honor.

10 JUDGE STECKLER: Let's take -- Mr. Wright, do you
11 need a few minutes to prepare?

12 MR. WRIGHT: Just a couple minutes, Your Honor. I
13 would -- I would request I be given the leeway to go
14 beyond the scope of direct so that we can dispense with
15 the need to call Mr. VanOpDorp in our case-in-chief, and
16 just be done with him.

17 JUDGE STECKLER: Objections?

18 MS. LaROSE: Well, Your Honor, I think the
19 individual -- well, maybe I should ask the question.

20 Mr. Wright, do you have an approximate idea of how
21 long -- even though it is early, you haven't even sat
22 down and written this out, but how long you -- I have
23 witnesses after him, and --

24 MR. WRIGHT: No, I'll be ready to ask Adam
25 questions in five minutes. I have got some pre-notes,

1 some notes are ready, and how long his testimony will
2 take on my cross, I guess it is hard to say, depending
3 on how the answers go, but I can start my questions in
4 five minutes.

5 MS. LaROSE: I wasn't asking when you were going to
6 start. I understood that from your prior exchange with
7 the Judge.

8 I am asking so that I can get sort of an idea about
9 how much time you think, if you get responsive answers.
10 Are we talking an hour or --

11 MR. WRIGHT: I don't think that long. If I had to
12 ballpark it, I would say a half an hour.

13 MS. LaROSE: Okay. Okay.

14 MR. WRIGHT: But don't hold me to it.

15 JUDGE STECKLER: Okay, if you don't mind, let's
16 take ten --

17 MR. WRIGHT: Okay.

18 JUDGE STECKLER: -- so everybody gets a stretch
19 break in, as well, and we will be back on the record at
20 3:25 Eastern, 2:25 Central.

21 Thank you.

22 MR. WILLIAMS: Your Honor?

23 JUDGE STECKLER: Yes, General Counsel?

24 MR. WILLIAMS: In response to your question about -
25 - in response to Mr. Wright's request to go beyond the

1 scope of direct, I am okay with that to a degree. I
2 guess it is the matter of degree, depending on how far
3 afield he might go in his questions.

4 So, to the extent that he goes just a little bit
5 beyond, I am okay, but I guess we will just have to take
6 it question by question.

7 JUDGE STECKLER: Mr. Wright, was Mr. VanOpDorp
8 subpoenaed for you, as well?

9 MR. WRIGHT: He was.

10 JUDGE STECKLER: Okay.

11 MR. WRIGHT: I believe we -- yeah. I don't believe
12 one got served on him, because we didn't get a green
13 card, but, yeah.

14 MS. LaROSE: Your Honor, they did not serve a
15 subpoena on him. I do not know why that is being stated
16 as -- I can establish that they did not serve him with
17 one. They may have --

18 JUDGE STECKLER: Well, you said you sent it, but it
19 was not necessarily received. Is that what you are
20 saying, Mr. Wright?

21 MR. WRIGHT: Yes.

22 JUDGE STECKLER: And you didn't get the service --
23 the card that would show service.

24 MR. WRIGHT: Right.

25 JUDGE STECKLER: Okay, we will come back and see

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 how things go, okay?

2 We will go off the record now.

3 [Off the record]

4 JUDGE STECKLER: Okay, let's go back on the record,
5 please.

6 THE COURT REPORTER: We are on.

7 JUDGE STECKLER: Very well. Mr. Wright, you may
8 inquire.

9 MR. WRIGHT: Thank you, Your Honor.

10 CROSS EXAMINATION

11 Q BY MR. WRIGHT: Adam, you testified on direct about
12 two Needham employees, Tim Hamann and Luke Geiger. Do
13 you recall that?

14 A Yes.

15 Q You never worked any project with either of those
16 individuals, did you?

17 A Not until they came to the Dan Dolan's project that
18 I was on.

19 Q And when was that?

20 A That would have been July, early July, end of June,
21 right in there.

22 Q And how -- how many days did you work with them on
23 that project?

24 A I am going to say that they were there for three to
25 four days.

1 Q Were they both there for three to four days?

2 A Yes, on and off.

3 Q Okay. What equipment were they operating?

4 A They were -- one was on the rubber tire combination
5 backhoe, 310, that they have. I believe we had one on
6 the -- it could be an excavator.

7 Q Okay. You testified that the standard start time
8 was 7:00 a.m. for everybody at that company, correct?

9 A Yes.

10 Q And that included you, right?

11 A Yes.

12 Q But then you testified on July 1st, 2019, you were
13 working by 6:15 or 6:20 a.m.; is that correct?

14 A Yes.

15 Q Were you actually working or did you just show up
16 at the jobsite at 6:15 or 6:20?

17 A I was actually working setting up GPS and
18 electronics for the layout of our job.

19 Q Okay, and when did you start doing that?

20 A Well, we were always on the *[Voice transmission*
21 *garbled - paper rustling in microphone]* early or late.
22 So, I mean there would be different days *[Voice*
23 *transmission garbled - paper rustling in microphone]*,
24 but there --

25 Q And that Dan Dolan job was in a residential zone;

1 correct?

2 A Yes.

3 Q And was it not against city codes to start working
4 in a residential zone before 7:00 a.m.?

5 MS. LaROSE: Objection to the relevance.

6 MR. WRIGHT: Well, Your Honor, I think --

7 JUDGE STECKLER: Let me ask a question here, Mr.
8 Wright, just to clarify.

9 When you are setting up GPS and layouts, what does
10 that involve?

11 THE WITNESS: Just setting up electronic equipment,
12 like hand -- a hand-held base station, they are called
13 on a wooden pole that we had on the jobsite. We have a
14 hand-held device, a grade pole that you would check the
15 grade with, with hand-held electronic stuff.

16 JUDGE STECKLER: And why were you doing this work
17 that early?

18 THE WITNESS: Just to try to get in front of the
19 day, get in front of the guys and try to get everything
20 lined up so we could get started by 7:00 o'clock.

21 JUDGE STECKLER: Okay, so if you hadn't done it at
22 that time, what would have happened?

23 THE WITNESS: I mean, we would just be starting
24 later, maybe a day later.

25 JUDGE STECKLER: Okay. To your knowledge, what are

1 the restrictions for working in a residential zone?

2 THE WITNESS: To my knowledge, I believe it is 7:00
3 a.m. for machinery starting; that is my knowledge.

4 JUDGE STECKLER: Okay -- okay, so how much noise
5 does setting up GPS, etc., cause?

6 THE WITNESS: Minimal to none.

7 *[Voice transmission garbled - paper rustling in*
8 *microphone]*

9 JUDGE STECKLER: Is --

10 THE WITNESS: *[Voice transmission garbled - paper*
11 *rustling in microphone]* -- pickup truck.

12 JUDGE STECKLER: Okay, Mr. Wright, you may
13 continue.

14 MR. WRIGHT: Thank you, Your Honor.

15 Q BY MR. WRIGHT: Adam, Needham employees had a 30-
16 minute unpaid lunch each day; correct?

17 A Yes.

18 Q The stop times on jobs varied day to day; is that
19 accurate? Is that fair?

20 A Yes.

21 Q You said -- I believe your testimony was that Chad
22 Havill worked with you that week of July 1st on the Dan
23 Dolan Homes project; is that correct?

24 A Yes.

25 Q Was that project at or around Northwest Point in

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Northwest Davenport?

2 A Yes.

3 Q Okay, and Chad Havill was an employee of Needham,
4 right?

5 A Yes.

6 Q You said you worked until 4:30 that day. What were
7 you doing until 4:30?

8 A I -- I did not -- I did not say I was working until
9 4:30.

10 Q Okay, how late did you work on July 1st, 2019?

11 A 4:40, 4:45.

12 Q Okay. What were you doing until 4:40 or 4:45?

13 A Installing sewers, backfilling, doing that sort of
14 work.

15 Q How late was -- did you see Chad Havill that day on
16 the job?

17 A Yes.

18 Q How late was he there? Did you see him leave?

19 A Yeah, it would have been at 4:30.

20 Q Chad didn't leave until 4:30?

21 A Correct.

22 Q Okay. Do you know whether Tim left the jobsite
23 that day, he had to return back to the Needham shop to
24 get grease or fuel or other materials for that project?

25 A I believe that he mentioned that that was where he

1 was heading. I did not that he was heading out.

2 Q And what time did he tell you that; when he left at
3 around 4:30?

4 A Yes.

5 Q Okay, do you know one way or the other whether he
6 actually went back to the shop that day?

7 A I do not.

8 Q Okay, so you don't have any evidence to dispute
9 that Chad did, in fact, return to the shop that day; is
10 that correct?

11 A Correct.

12 Q And if Nick Needham were to testify that Chad
13 Havill informed him that you actually left the jobsite
14 on that day at 3:30, you wouldn't have any evidence to
15 dispute that, would you?

16 MS. LaROSE: Objection.

17 JUDGE STECKLER: Mr. Wright, are you saying that it
18 is just a he-said/she-said?

19 MR. WRIGHT: Correct.

20 JUDGE STECKLER: You can argue that on the brief.

21 MR. WRIGHT: Okay.

22 Q BY MR. WRIGHT: You didn't return back to the shop
23 on July 1st with Chad Havill, did you?

24 A No.

25 Q Okay. You said you turned your timecard in to Curt

1 -- Curt McKinley on Monday the 8th, is that correct,
2 July the 8th?

3 A Yes.

4 Q And that was standard procedure to turn it in on
5 that day of the week?

6 A Yes, but not to -- but not to somebody physically
7 coming to the jobsite to pick it up from me.

8 Q Okay. You don't know one way or the other whether
9 or not Needham management was requested by Dan Dolan or
10 other owners on that project for any kind of cost
11 update, or anything like that; you don't know one way or
12 the other, correct?

13 A No.

14 Q Okay. You said you met with Nick and Curt on July
15 8th, and they informed you of the Company's decision to
16 terminate your employment, correct?

17 A Yes.

18 Q And during that meeting, they raised the issue of
19 your timecard, and that they believed you were cheating
20 or stealing from the Company, I believe you said; is
21 that correct?

22 A Yes.

23 Q Did you tell them during that meeting that you
24 started work that day at 6:15 or 6:20, and stayed until
25 4:40, so that your timecard was accurate? You didn't

1 say that, did you?

2 A I don't recall that.

3 Q You don't recall ever telling them, or trying to
4 explain, "No, I was there from 6:15. I was setting up
5 GPS, and I stuck around until 4:40." You didn't say
6 that, did you?

7 MS. LaROSE: Objection, argumentative.

8 JUDGE STECKLER: What, if anything, did you say,
9 Mr. VanOpDorp, about the accuracy of your timecard?

10 THE WITNESS: I believe I didn't say anything about
11 the timecard.

12 Q BY MR. WRIGHT: All right, wouldn't that have been
13 a good time to say something about the timecard --

14 MR. WILLIAMS: Objection, argumentative.

15 JUDGE STECKLER: Sustained.

16 Q BY MR. WRIGHT: Did you not make a remark to -- or
17 in the presence of Curt McKinley, Nick Needham, and Bill
18 Bouchard, to the effect that they needed to check other
19 employees' timecards, because you weren't the only one
20 cheating on your timecard?

21 A I did not say those direct words.

22 Q No --

23 A I said that if they were checking mine, they needed
24 to be checking everybody's.

25 Q Okay, and if Curt McKinley or Nick or Bill

1 testified that you said that you weren't the only one
2 cheating on your timecard, would they each be lying?

3 MR. WILLIAMS: Objection, Your Honor.
4 Argumentative.

5 JUDGE STECKLER: That is another he-said/she-said.
6 We will save it for the briefs.

7 MR. WRIGHT: Sure. Thank you, Judge.

8 Q BY MR. WRIGHT: Adam, you would agree that it is
9 important for employees to keep accurate time on their
10 timecards, correct?

11 A Yes.

12 Q And you would agree that employers such as NEI
13 shouldn't be required to pay its employees for hours
14 they did not work, correct?

15 A Correct.

16 Q Adam, you don't deny that you walked and talked on
17 your cell phone while operating heavy equipment while
18 working for Needham, do you?

19 A No.

20 Q Okay, and Needham had a rule prohibiting cell phone
21 use -- cell phone use while operating equipment, did
22 they not?

23 A While operating the equipment, yes.

24 Q But you used your phone while you were operating
25 the equipment, right? Isn't that what you just said?

1 A I had a hands-free headset that I would talk into,
2 and/or I would stop the equipment and make my phone
3 calls while lining up dump truck employees, ordering
4 parts and sewers -- or water pipes and all of that.

5 Q Is it your testimony then, that the only time you
6 would be on your cell phone was if you were using a
7 hands-free device, or if you were not operating
8 equipment?

9 A Can you repeat the question?

10 Q Sure. Is it your testimony that the only times you
11 were ever on your cell phone was if you were either on a
12 hands-free device, or if you were not in the process of
13 operating equipment?

14 A Yes.

15 Q Okay, so then you didn't ever use your cell phone
16 while operating heavy equipment, with your phone pinched
17 between your shoulder blade and your cheek as I am doing
18 right here [*demonstrating*] while driving a -- you never
19 did that?

20 MS. LaROSE: Objection, asked and answered,
21 argumentative.

22 MR. WRIGHT: Well, he --

23 JUDGE STECKLER: Well, I think it is different, but
24 anatomically speaking, Mr. Wright, I think you are
25 talking about the clavicle and scapula? The scapula is

1 the shoulder blade, so it would be physically impossible
2 for him to be using his scapula, so let's clean that up
3 a bit, please.

4 MR. WRIGHT: Okay.

5 Q BY MR. WRIGHT: Did you -- did you ever operate
6 heavy equipment while on your cell phone with the cell
7 phone pinched, in any form?

8 A In certain cases, yes.

9 Q Okay. And so that would be without hands-free
10 devices, as you testified before, correct?

11 A Yes.

12 Q Okay.

13 JUDGE STECKLER: So, Mr. VanOpDorp, when you got
14 that call from Joe Needham, you answered it, correct?

15 THE WITNESS: Yes. No, I called him back.

16 JUDGE STECKLER: Okay, so were you on hands-free at
17 that time?

18 THE WITNESS: No. I was off the equipment.

19 JUDGE STECKLER: Okay, Mr. Wright, you may
20 continue.

21 MR. WRIGHT: Sure. Thank you, Your Honor.

22 Q BY MR. WRIGHT: Adam, you would admit it if you
23 were on your phone in the manner you just demonstrated,
24 not using the hands-free device, but also while
25 operating the equipment, would that pose a safety risk

1 to the co-workers on the job, don't you?

2 A No, not if there was nobody around. I don't know
3 if the --

4 Q What if there was? What if there was other co-
5 workers around?

6 MS. LaROSE: Your Honor, I am just going to object
7 to this. This has been an argument with this witness.
8 I mean, I can understand a little bit, but this is just
9 one question after another. I mean, the Employer can
10 make this argument in it's -- in any statement it wishes
11 to make on the record or in its brief.

12 JUDGE STECKLER: Mr. VanOpDorp, I am going to
13 overrule the objection, so you may answer about the
14 safety. If someone -- let me ask you this: Did you
15 ever operate the phone, not hands-free, while you were
16 operating heavy equipment?

17 THE WITNESS: Yes.

18 JUDGE STECKLER: And were there -- was there ever
19 an occasion when other people were working in the area
20 where you did so?

21 THE WITNESS: Yes.

22 JUDGE STECKLER: All right, Mr. Wright, you may
23 continue.

24 MR. WRIGHT: Well, then I would reiterate my
25 question.

1 Q BY MR. WRIGHT: Adam, would that not pose a safety
2 risk in that instance?

3 A Like I said, if they were in the general area, I
4 would say yes.

5 Q Okay.

6 JUDGE STECKLER: Mr. VanOpDorp, did you ever get
7 disciplined for operating the phone while you were
8 working?

9 THE WITNESS: Verbally.

10 JUDGE STECKLER: When was that?

11 THE WITNESS: I couldn't tell you.

12 JUDGE STECKLER: Was it -- can you recall whether
13 it was in 2019?

14 THE WITNESS: Before --

15 JUDGE STECKLER: Was it in 2019? Can you give a
16 general --

17 THE WITNESS: *[Voice transmission garbled]*

18 MS. LaROSE: Your Honor --

19 JUDGE STECKLER: That was garbled. Can you repeat
20 your answer, Mr. VanOpDorp?

21 MS. LaROSE: Your Honor, if I may, the reason it is
22 sounding garbled is because Mr. Wright went and took a
23 drink right next to his cell phone. So if you can just
24 mute yourself, maybe, Jeff, while she is asking
25 questions of the witness?

1 MR. WRIGHT: Sure. Thank you for that. That is
2 what happened.

3 JUDGE STECKLER: And lay off the vodka, just
4 kidding.

5 *[Laughter]*

6 JUDGE STECKLER: Okay, can you repeat your answer,
7 please, Mr. VanOpDorp?

8 VanOpDorp I said, yes.

9 JUDGE STECKLER: Okay, Mr. Wright, you may
10 continue, and I will mute myself this time.

11 MR. WRIGHT: And I apologize.

12 Q BY MR. WRIGHT: That was a "yes" to you had a
13 verbal reprimand about the cell phone use in 2019?

14 MR. WRIGHT: I don't recall the question so I
15 apologize, Judge, if I mischaracterized that.

16 Q BY MR. WRIGHT: Adam, is that fair? Is that your
17 answer?

18 A *[No audible response]*

19 Q And, in fact, Curt McKinley had told you on a
20 number of occasions to stay off your cell phone while
21 operating equipment, had he not?

22 A Yes.

23 Q And Dan Needham had also told you a number of times
24 to stay off your cell phone while you were operating
25 heavy equipment, right?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Not that I can remember Dan.

2 Q Okay, not to your recollection?

3 A Yes.

4 Q Okay.

5 [Long pause]

6 Q And so obviously if you were on your cell phone
7 while you were operating equipment, then you were not
8 necessarily on your cell phone during working hours;
9 correct?

10 A Yes, or work-related instances like calling for
11 materials, communicating with Nick, and telling the
12 supervisor what was going on the jobs, or ordering dump
13 trucks, and if we needed to switch materials or go to a
14 different location. I mean, it was a lot of work-
15 related materials that I was on the phone for.

16 Q Okay. I just want to go back one -- one moment.

17 You had mentioned that you had been verbally
18 reprimanded about the cell phone use while operating
19 equipment in 2019. Is the same true that you had
20 received verbal reprimands for that same issue in 2018,
21 as well?

22 A I am going to say that I don't recall.

23 Q So you don't remember one way or the other?

24 A Right.

25 Q That's fine.

1 Did you use your cell phone during working hours
2 for non-work-related reasons as well, didn't you?

3 A Well, I am going to say on the proper times, yes,
4 just like anybody else would.

5 Q Okay, you never used your cell phone during working
6 hours when it wasn't a lunch break or other -- or some
7 other form of authorized break? In other words, you
8 never used your cell phone when you were supposed to be
9 working, for personal use?

10 A I am going to say, I would take phone calls from my
11 wife, in case there was an emergency, or something like
12 that. Yes, I would take them phone calls.

13 MS. LaROSE: Your Honor, I think the same thing is
14 happening. He is cutting out on me because,
15 unfortunately, Mr. Wright is moving around a little bit
16 too close to the phone. We are losing his answers.

17 Also, I am going to object -- I have to object,
18 Jeff, because what is happening, what is concerning me,
19 is that the witness is being asked and forced to answer
20 the same questions twice, because we are making him
21 repeat things.

22 THE COURT REPORTER: Mr. Wright, the only way to
23 clean that up is to hang up your phone and to use your
24 computer like the rest of us. That is really the only
25 solution.

1 I know that both of you guys are in the room with
2 Stanley, and it is hard, but that -- that is the --

3 JUDGE STECKLER: Let's go off the record and try to
4 resolve the sound issue.

5 [Off the record]

6 JUDGE STECKLER: Back on the record, please.

7 Go ahead, Mr. Wright.

8 MR. WRIGHT: Thank you.

9 Q BY MR. WRIGHT:
10 Adam, did you ever use your cell phone during working
11 time, and when I say working time, I mean the time that
12 you are supposed to be working and not before the start
13 of the workday. I am not talking about lunch. I am not
14 talking about authorized breaks. I am talking about
15 time you are supposed to be working.

16 Did you ever use your cell phone for personal use
17 during working time while you were employed at Needham
18 Excavating, Inc.?

19 A Yes, I would take phone calls from my wife in case
20 there was something that needed to be answered at home
21 in an emergency, just like anybody else would.

22 Q And is that the only reason or time you would take
23 personal phone calls during working time?

24 A Yes.

25 Q Okay. You didn't ever take personal phone calls

1 from any Local 150 reps during working time?

2 A I am going to say yes.

3 Q You did?

4 A Yes.

5 Q So your last answer about the only time you ever
6 did it during working time was with regard to your wife
7 or family was -- that was false.

8 A Well, yes, I would -- I guess I would say that that
9 was my personal business, so yes.

10 Q Okay, but you did talk to Local 150 representatives
11 on your personal cell phone during working time, is that
12 correct?

13 A For an extent until the e-mail came out about --
14 until my -- until he knew I was talking to 150, so when
15 I got my e-mail I quit doing that.

16 Q Okay, so you're -- so prior to doing that, and I
17 believe you are referring to what General Counsel went
18 over with you as General Counsel's Exhibit 8(a), that
19 was Nick's e-mail to you in April of 2019 about you need
20 to limit union business to before or after work, or
21 during lunch or during breaks, correct? Do you remember
22 that, Adam?

23 A Yes.

24 Q Leading up to that time though, you were on the
25 phone with Local 150 during working time, right?

1 A Yes.

2 Q And that didn't stop until you got the e-mail from
3 Nick.

4 A Correct.

5 Q Okay.

6 JUDGE STECKLER: Mr. VanOpDorp, while you were
7 working, did you observe anybody else on cell phones?

8 THE WITNESS: I did, all the time.

9 JUDGE STECKLER: Can you tell me who they were?

10 THE WITNESS: All -- Tracey Marshall, Ian Macumber;
11 I mean, even Curt McKinley and -- even when Nick Needham
12 was on machinery, he would be on his cell phone. I
13 mean, it was everybody; all of the employees. At
14 certain times during the day, I mean, everybody was on
15 their cell phones. That was the only way of any
16 communication between all of us or any of us. I mean --
17 I mean, like I said, I would take some personal calls,
18 but, you know, a lot of it was Needham Excavating work-
19 related, but, yes, everybody was on their cell phones.

20 JUDGE STECKLER: Was this your personal phone, or
21 was this a company phone?

22 THE WITNESS: My personal phone.

23 JUDGE STECKLER: Mr. Wright, you may continue.

24 MR. WRIGHT: Thank you, Your Honor.

25 Q BY MR. WRIGHT: You also spent working time talking

1 with Local 150 representatives in person on the
2 jobsites, didn't you?

3 A One time.

4 Q Okay, and when was that?

5 A That was -- I was working at Portillo's, and I was
6 going to set the GPS up in the parking lot, and that was
7 when Shannon Vickers came up to me and we had a small
8 talk conversation, and like I said, nothing came about
9 out of it, and I went about my business setting up the
10 GPS at Portillo's jobsite.

11 Q When was that Portillo's job?

12 A Oh, it is in the recording there. It would have
13 been before March. It would have been like February-
14 ish.

15 Q And is it your testimony that that was the only
16 instance where you talked with a Local 150 rep at a
17 jobsite during working time?

18 A Yes.

19 Q How long did that conversation last with Shannon?

20 A Less than five minutes.

21 Q Okay. Did you -- strike that...

22 Do you recall the e-mail response that you sent to
23 Nick Needham also on April 19th, 2019, when he e-mailed
24 you about, not limited to, working time, and you
25 responded, correct?

1 A Yes.

2 Q And in that e-mail, you copied two new individuals
3 to that e-mail chain.

4 A Right.

5 Q svickers@local150.org, and that is Shannon Vickers,
6 correct?

7 A Yes.

8 Q And mdouglas@local150.org. That is Marshall
9 Douglas, correct?

10 A Yes.

11 Q And I think you testified that Marshall Douglas was
12 the Local 150 Secretary?

13 A Treasurer.

14 Q Treasurer, thank you.

15 And Mr. Vickers was an organizer for Local 150,
16 right?

17 A Yes.

18 Q And what was the purpose in copying those two
19 individuals on your e-mail?

20 A This is when I was beginning -- I mean, I was in
21 the beginning of my organizing or reorganizing campaign
22 with them, so I thought this was something they needed
23 to be shown.

24 Q Did you ever talk to Patrick -- do you know who
25 Patrick Carlson is?

1 A Yes.

2 Q He is also an organizer for Local 150, is that
3 correct?

4 A Yes.

5 Q Did you ever talk to him at a jobsite or on your
6 cell phone during working time --

7 A No.

8 Q No, okay. How about during non-working time?

9 MS. LaROSE: Objection. That goes to Section 7
10 rights.

11 JUDGE STECKLER: Objection is sustained.

12 Q BY MR. WRIGHT: You weren't disciplined on April
13 19th for talking to Local 150 reps or conducting any
14 business during working time, were you?

15 A No.

16 Q Okay. When it comes to discipline, are you aware
17 as to whether or not the Company ever issues written
18 reprimands? Is that something you have ever seen?

19 A Not -- I have been there for thirteen years, and
20 no.

21 Q It is pretty much all verbal. You get a talking
22 to, and then -- or you are either fired.

23 A In my case, yes.

24 Q And has that also been what you have seen from the
25 Company over the -- over your thirteen years that you

1 have been there?

2 A I have not really ever been around any firing of
3 any of them guys. I have seen some layoffs.

4 Q Okay.

5 A I have never been around a firing of them, when
6 they were firing somebody.

7 Q You mentioned in your April 19th e-mail to Nick
8 Needham, that I am still talking about, that you had a
9 Local 150 in the window of your truck. Do you remember
10 that, putting that in the e-mail?

11 A Yes.

12 Q Okay, and is that the day or right around the time
13 that you put the Local 150 sticker in the back of your
14 truck?

15 A No, I believe I had testified earlier about April
16 10th.

17 Q Okay.

18 A The day before the April 11th meeting.

19 Q Okay, and I forget your testimony about where you
20 parked your truck on a day to day basis for the Company.
21 Can you restate that?

22 A Either on the jobsites where we could get our truck
23 and vehicles into the jobsites to park, and out of the
24 way. Needham Shop/K & K Repair Shop, you would have an
25 alleyway between the buildings, and you would pull up

1 there alongside their building where we could get up --
2 where we could get the vehicle out of the way so you
3 could still get through.

4 Q Okay. The truck would have been highly visible to
5 Needham employees and Needham management, right?

6 A Yes.

7 Q So if the sticker was in your truck as of April
8 10th, the Company likely would have seen it on that day
9 or soon thereafter. Is that what you are saying?

10 A That is a fair statement, yes.

11 Q Okay, and you also mentioned that you wore the
12 Local 150 clothing. Do you remember that?

13 A Yes.

14 Q And I know you testified about you wore a Local 150
15 sweatshirt into that April 11th meeting, correct?

16 A Yes.

17 Q Did you also wear Local 150 clothing at work on the
18 days that followed the April the 11th meeting?

19 A Every single day.

20 Q Okay, and you were allowed to do that, right?

21 A Well, yeah. They didn't say not to.

22 Q They never gave you a verbal reprimand or told you
23 to stop wearing it, right?

24 A Well, I mean, no.

25 Q Okay. You operated several pieces, several

1 different pieces of heavy equipment while working for
2 the Company, correct?

3 A Yes.

4 Q And a lot of that equipment would be shared by and
5 between other Needham operators, or other -- other heavy
6 equipment operators, correct?

7 A Yes.

8 Q So one day you might be on a piece of heavy
9 equipment, and the next day Tracey might be using it, or
10 some other operator, correct?

11 A Yes.

12 Q And Needham had a general rule against smoking in
13 the cab of equipment, correct?

14 A Yes.

15 Q And you were aware of that rule, right?

16 A And -- yes.

17 Q All right, and at least part of the reason behind
18 that rule was because they didn't want the smell of
19 smoke stinking up the cabs in the equipment, right?

20 A Yeah, I believe that was the reasoning.

21 Q Okay. And isn't it true that Joe Needham told you
22 on a number of occasions not to smoke in the cab of the
23 equipment?

24 A Yes.

25 Q Okay. And it is also true that Curt McKinley told

1 you not to smoke in the cab of equipment, correct?

2 A I don't think Curt ever warned me about it.

3 Q Okay. How about Dan Needham?

4 A No. No, Dan never warned me about it.

5 Q Dan didn't warn you about or tell you to not be
6 smoking in the cab of a 770, on or about May 13th of
7 2019?

8 A I don't recall.

9 Q He may have, but you just don't recall one way or
10 the other?

11 A One way or the other, I don't recall that.

12 Q Okay. Do you recall working on a project, a Cubby
13 Park project in West Branch, Iowa?

14 A Yes.

15 Q Okay. And that was also in or around May of 2019,
16 is that correct?

17 A Yes.

18 Q And while on that project, you ran over some ADA
19 panels with a skid-loader, correct?

20 A I don't recall that.

21 Q You don't recall?

22 A No.

23 Q You may have, but just don't remember?

24 A Yeah, I don't recall running over that.

25 Q Would running over -- do you know what I am talking

1 about when I -- I assume you do, as an operator, but do
2 you know what I am talking about when I refer to ADA
3 panels?

4 A No, I --

5 Q Let me clarify.

6 Are you familiar, and maybe I will --

7 MR. WRIGHT: Judge, request permission to pull up
8 or share my screen.

9 JUDGE STECKLER: Yes, please.

10 [Long pause]

11 Q BY MR. WRIGHT: Adam, let me --

12 A That?

13 Q Yes, let me just preface this.

14 I am showing you what's been marked as part of
15 Respondent's Exhibit 2, and I will represent to you --
16 this -- this is what I am talking about when I say ADA
17 panels --

18 A Gotcha.

19 Q You are familiar with what I am talking about then?

20 A Yeah, I see the picture, yes.

21 Q Okay, and upon seeing this picture, does it refresh
22 your recollection as to whether or not you did or did
23 not run some of these over with a skid-loader on the
24 Cubby Park project?

25 A I did, but I didn't think I damaged them at that

1 point.

2 Q Okay, but you did run them over?

3 A I did.

4 Q Okay.

5 A I had the track running too low, but I didn't know

6 I damaged them, I guess. I guess I never got out to

7 check on them, I guess.

8 Q And were you on your cell phone when you ran these

9 over?

10 A No.

11 Q Okay. And you were -- what were you doing on this

12 project?

13 A We were putting down finish -- the backfill on the

14 concrete and everything with topsoil.

15 Q Okay. So would -- would that portion of the job,

16 and I am not familiar with operators in terms of their

17 job duties, but how would that -- putting down that

18 topsoil, how would it rank in terms of difficulty,

19 compared to what you usually do?

20 A Very low.

21 Q Pretty easy -- pretty easy assignment, right?

22 A Pretty easy assignment.

23 Q Okay. You would admit that -- I mean, did you run

24 these over just because of your carelessness, or was

25 there something that caused you to run them over?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A No. I mean, as anyone on here knows, it -- you are
2 never purposely doing anything that is going to cause
3 damage to anything. There -- yeah, I never in my life
4 would damage something for a reason. I would have been
5 an accident.

6 Q Okay, what I guess is --

7 A I have got more pride in my work than that.

8 Q Sure, and by no means am I trying to imply that you
9 did it intentionally. I was just asking, was there
10 something that caused the accident other than your own
11 carelessness?

12 MS. LaROSE: Objection --

13 JUDGE STECKLER: Before you answer, Ms. LaRose, did
14 you have an objection?

15 MS. LaROSE: I was objecting to the narrative, Your
16 Honor, supplied by Counsel. The form of the question.

17 JUDGE STECKLER: Okay, so at the end -- what was
18 the question again, Mr. Wright?

19 Q BY MR. WRIGHT: Was there anything other than your
20 own carelessness that caused you to run these ADA panels
21 over with a skid?

22 JUDGE STECKLER: Well, Mr. VanOpDorp, let me ask
23 you, can you explain how those panels got run over?

24 THE WITNESS: I mean, they -- they were sitting
25 next to the edge of the concrete, and I mean, I came

1 around the edge of that, and I must have just clipped
2 them a little bit. Like I was saying, I take way more
3 pride in my work than to just try to intentionally
4 destroy something. I do not -- that is not me. It was
5 an accident.

6 JUDGE STECKLER: Okay, were they -- when -- when
7 the accident occurred, were those panels closer to the
8 edge of the concrete, and did they move, or can you tell
9 from this picture?

10 THE WITNESS: By the looks of it to me, it looks
11 like somebody flipped one over or moved it. You can
12 pretty much see my track, but the one that is sitting on
13 top, it doesn't appear to be broken to me, but -- I
14 mean, I am assuming somebody moved them around.

15 JUDGE STECKLER: Okay, where do you recall them
16 being at the time this accident occurred?

17 THE WITNESS: On the edge of the pavement right
18 there.

19 JUDGE STECKLER: Okay, Mr. Wright, you may
20 continue.

21 MR. WRIGHT: Thank you, Your Honor.

22 I think that is all on that photo.

23 Q BY MR. WRIGHT: Adam, do you also recall in April
24 2019 damaging a laser pole on a dozer blade?

25 A You might have to refresh my memory on that one.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WRIGHT: Okay, Judge, I would request again
2 permission to share my screen.

3 JUDGE STECKLER: Certainly.

4 MR. WRIGHT: I need to find this one.

5 [Long pause]

6 Q BY MR. WRIGHT: Okay, Adam, I am showing you the
7 first page of Respondent's Exhibit 4.

8 **(Respondent's Exhibit 4, marked for identification.)**

9 Q BY MR. WRIGHT: This is -- I will represent to you
10 that this is text message correspondence between you and
11 someone else. Do you recognize this text string of
12 messages?

13 Who was this with? Between you and who?

14 A I mean, was it Curt?

15 Q If you don't know -- I am asking you, do you
16 recall?

17 A It was either going to be between Curt or Nick.

18 Q Okay.

19 A Those are the ones that you report anything that
20 you ever damage to.

21 Q Does this -- does this refresh your recollection,
22 as to whether or not, in fact, you --

23 A I am going to stop you right there, it is
24 definitely not to Curt, because I said, "I bent the
25 laser pole on the dozer. Curt is going to help me

1 straighten it real quick in the morning."

2 Q Okay, so you believe this would have been from you
3 to Nick?

4 A Yeah, I believe that would be from me to Nick.

5 Q Okay. And you don't deny now, having seen this
6 text message, that you did, in fact, damage the laser
7 pole on the dozer blade, correct?

8 A Yeah. I mean, yeah, it is right there.

9 Q Okay. And then NEI had to get that laser pole
10 repaired, correct?

11 A I mean, right there, me and -- I don't remember
12 what happened after that, but I believe we bent it back.

13 Q Your recollection is that you bent it back, and you
14 didn't have to take it to any kind of repair shop?

15 A Right.

16 Q Okay.

17 A And to be fair, that was no carbon fiber pole. It
18 was no aluminum cast laser pole. That was one metal
19 pipe that it was sticking out. I mean, like I said,
20 accidents happen. There was no purpose --

21 Q There is no question pending. Thank you.

22 Do you recall working on a project at 18th Street
23 in Moline, correct?

24 A Yes.

25 Q Is that commonly referred to as the 18th Street - B

1 project?

2 A Yes.

3 Q And that project took place in the fall of 2018, is
4 that right?

5 A Yes.

6 Q You were the lead man on this project, correct?

7 A Yes.

8 Q Okay. And as part of that job, you and your crew
9 were installing around 300 feet of sanitary sewer, and I
10 believe, some other -- some other items; is that
11 correct?

12 A Yes.

13 Q And the job took about a month to complete that 300
14 feet of sewer, right?

15 A Yes.

16 Q Okay. You don't deny that it was later discovered
17 that -- when a Needham crew -- when then the crew got to
18 the first manhole they found that you guys had installed
19 the pipes about eight or nine inches lower than the
20 design the elevations called for; is that correct?

21 A Yeah, I believe -- I believe it was four to six
22 inches low, but yeah -- however, it was low, yes.

23 Q And the City of Moline had required the Company to
24 tear up the entire block that had been installed at that
25 incorrect elevation and re-lay that pipe, is that

1 correct?

2 A Yes.

3 Q And you don't deny that it took the Company about a
4 month to correct that mistake and re-lay that
5 underground piping, do you?

6 A I -- after I got to the end of that job, they took
7 me off, and I don't know how long it ended up taking
8 them to replace it.

9 Q Okay. Did you ever hear from anyone or get word
10 that the Company or anyone in management was not happy
11 about that 18th Street project that the Company
12 considered firing the whole crew?

13 A Nick Needham called me on the phone one day when we
14 discovered this, and he laid into me pretty good about
15 it, but -- but, I mean, as I took it, he never
16 threatened me with firing.

17 Q Okay. As a lead man on a job, it is your
18 responsibility to check the elevation of the pipe and
19 check your benchmarks each day in order to make sure you
20 are installing that pipe according to the plans; is that
21 correct?

22 A Well, no. I have a lead pipe setter also, and he
23 would be responsible for grades and checking the
24 benchmarks while I was involved in doing other work and
25 digging and worrying about that part, so, no, I had my

1 lead pipe setter on that part of it.

2 Q So as the -- give me the hierarchy on one of these
3 jobs. Are you and the lead pipe setter equals on these
4 projects or --

5 A I was never called a foreman, or a lead man. The
6 pipe setters were also making over scale wage, and truck
7 pays. We were all on the same job, so I would say we
8 would share that responsibility.

9 Q You viewed it as a shared responsibility, but it
10 was, at least in part, your responsibility as a lead
11 man, is that right?

12 A I am going to -- like I will say again, I -- I
13 remember putting that part on my lead pipe setter.

14 Q Okay.

15 A I did not -- I guess if there is a co-lead man, you
16 would have to double check, but no, I did not double-
17 check him.

18 Q Okay. Joe Needham had at least one conversation
19 with you prior to your first job as a lead man in the
20 summer of 2018 on the 11th Street project, about the
21 importance, as the lead man, to check the benchmarks
22 each day, is that correct?

23 A I don't recall.

24 Q You don't recall one way or the other whether or
25 not you had that conversation with you to stress that --

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A No.

2 Q Are the pipe setters -- is there anyone within the
3 Company, within NEI or outside, that is referred to
4 amongst the Company or its employees, as the lead pipe
5 setter?

6 A I mean, like I said, I never had the position of a
7 lead man anyways. I never heard myself get called a
8 foreman or anything.

9 As I took it, the pipe setter was getting a truck
10 pay *[Voice transmission garbled]* of a scale, also would
11 be considered a foreman to a lead man. That is how I
12 would always -- that is how I would take it.

13 Q That was your interpretation or understanding?

14 A Yep, that was my understanding.

15 Q Okay. Do you remember working a job on the 11th
16 Street - Moline?

17 A Yes.

18 Q That was your project, right?

19 A Which I also shared with a -- with the same pipe
20 setter that was with me on 18th Street.

21 Q Who was that?

22 A Jason Faulcks.

23 Q Okay. So you viewed it as you and Jason were co-
24 leads on that?

25 A Yes.

1 Q And that was in the summer of 2018, correct?

2 A Yes.

3 Q And that 11th Street - Moline project was a two-
4 phase project; is that correct?

5 A Yes.

6 Q And there was a City of Moline Inspector involved
7 with that job, that coordinated with the Company, is
8 that correct?

9 A Yes.

10 Q And her name was Erin Brunner?

11 A Yes.

12 Q The Company itself started doing their own pipework
13 and laying pipe somewhere around 2015 into 2016; is that
14 fair?

15 A That's fair.

16 Q Prior to that, your work as an operator was
17 different in that you would -- you would dig things back
18 and excavate it out, and then the plumbers would go in
19 and do the pipework, correct?

20 A Correct.

21 Q Okay, so your responsibility as an operator
22 increased as the Company changed from being a sub-
23 contractor, correct, to a prime; is that correct?

24 A I would say that's fair.

25 Q You don't recall having a conversation with Joe --

1 I know that's what you testified to, but I am wondering
2 if talking about the 11th Street, summer of 2018, 11th
3 Street project, you don't recall having a conversation
4 with Joe about, "If you need to go in early, you need to
5 have a plan. You need to visualize the project."

6 You don't remember that conversation?

7 A No.

8 Q Okay. Would you agree that as a lead man, it is
9 important to check -- to check your work each day to
10 make sure that any mistakes are corrected as soon as
11 possible?

12 MR. WILLIAMS: Objection to the question. He has
13 already testified he was not designated as a lead.

14 MR. WRIGHT: I understood it that he viewed it as a
15 co-lead on these projects.

16 MR. WILLIAMS: He has already testified that he
17 never got told that he was a lead.

18 Okay, then I would ask for you to rephrase the
19 question.

20 MR. WRIGHT: That's fine.

21 Q BY MR. WRIGHT: Adam, on the 11th Street job and on
22 the 18th Street job, you were one of the individuals
23 responsible for running and overseeing those two
24 projects, correct?

25 A Yes.

1 Q In that role, you would agree that it was important
2 for you to check the work done by you and your crew each
3 day to make sure that things were correct, because if
4 there were mistakes, they should be corrected as soon as
5 possible, right?

6 A Yes.

7 Q Because if you failed to check your work each day,
8 those mistakes can add up, correct?

9 A Right.

10 Q They build on each other as you lay pipe or do
11 other kind of work, correct?

12 A Yes.

13 Q Do you know when Phase 2 of the 11th Street -
14 Moline project was performed by the Company?

15 A That would be the following summer.

16 Q The summer of 2019?

17 A Yes.

18 Q And do you know whether or not Dan Needham was
19 running that job?

20 A Yes.

21 Q Do you have any evidence to dispute that on or
22 about July 8th, Dan Needham discovered that the sanitary
23 pipe that was installed by your crew in 2018 was
24 installed with backfall, and that the pipe would need to
25 be replaced at the correct elevation?

1 A Just the pictures Nick Needham showed me in the
2 office that day.

3 Q You looked t those photos?

4 A I did.

5 Q Did those photos give you any reason to believe
6 that the Company didn't have to tear up and re-do that
7 work?

8 A I mean, it was -- I mean, in the pictures, I just
9 seen tore up concrete, and like I said, I didn't sit
10 there an examine them to see what was going on.

11 Q Okay.

12 A He kind of showed them to me and I looked at them,
13 and then we went on our -- what happened.

14 Q Okay.

15 A So I didn't examine them to the point that I could
16 tell whether they were cutting concrete or fixing pipe.

17 Q Okay, you just saw the streets torn up?

18 A Yeah, which -- at the end of that first phase of
19 that project, there was a connection point there where
20 they were going to have to reconnect on to take back
21 off. We poured a little -- I don't recall how long the
22 section was -- a little temporary concrete, so it wasn't
23 permanent paving. I am not sure if they had to go back
24 past that. Like I said, I didn't examine the pictures.

25 Q You weren't on that job in 2019, right?

1 A No.

2 Q You don't know what all they had to correct?

3 A Correct.

4 Q Okay. Those issues at the 11th Street job, those
5 were brought up by Nick during your termination meeting
6 on the 8th of July, correct?

7 A Yes.

8 Q Okay.

9 MR. WRIGHT: Judge, can I just have five minutes to
10 confer with co-counsel? I may be done, but I am not
11 sure.

12 JUDGE STECKLER: That is fine. We will go off the
13 record for five minutes.

14 MR. WRIGHT: Thank you.

15 *[Off the record]*

16 JUDGE STECKLER: I'm sorry, back on the record.

17 MR. WRIGHT: That's okay.

18 Q BY MR. WRIGHT: One more question, just to clarify.
19 Have you ever heard anyone from Needham management
20 ever refer to the position of, quote, "lead pipe
21 setter?"

22 A No.

23 MR. WRIGHT: Okay, that's all I have, Your Honor.

24 JUDGE STECKLER: Mr. Williams, redirect?

25 MR. WILLIAMS: Yes.

1 REDIRECT EXAMINATION

2 Q BY MR. WILLIAMS: So, Mr. VanOpDorp, you testified
3 earlier that on July 8, 2019, you had a meeting with
4 Nick Needham and Curt McKinley, where they explained to
5 you the reasons for your discharge. Do you remember
6 that conversation you had with them?

7 A Yes.

8 Q And what were the reasons that you were given for
9 your discharge?

10 A Falsifying a timecard, and the 11th Street project.

11 Q Okay, were you told that talking on a cell phone
12 during working time was one of the reasons for your
13 discharge?

14 A No.

15 Q Were you told that smoking in the cab of a piece of
16 equipment was a reason for your discharge?

17 A No.

18 Q Were you told that running over panels at the Cubby
19 Park jobsite was the reason for your termination?

20 A No.

21 Q Were you told that damaging a laser told on a dozer
22 was part of the reason that you were discharged?

23 A No.

24 Q Were you told that the installation of the pipe at
25 the 18th Street jobsite was the reason for your

1 discharge?

2 A No.

3 Q Were you told that your work as a lead person, the
4 way they describe it, was a reason for your termination?

5 A No.

6 Q Now, going back to your, which would be General
7 Counsel's Exhibit 8(b), which I can pull up if you need
8 me to, but in general terms, prior to that e-mail, I
9 think you testified that employees were allowed to talk
10 about softball games, hunting trips, shooting, during
11 working times?

12 A Yes.

13 Q So when these communications took place, did they
14 take place in person or by cell phone?

15 A It could be cell phones or on the jobsites.

16 Q Okay, and so did some of these discussions on cell
17 phones take place with other heavy equipment operators?

18 A Yes.

19 Q And so, these -- these non-work-related subjects
20 took place while they were talking on their cell phone,
21 operating a piece of equipment during working time?

22 A Yes.

23 *[Long pause]*

24 MR. WILLIAMS: I have no further questions, Your
25 Honor.

1 JUDGE STECKLER: Ms. LaRose?

2 MS. LaROSE: Yes, thank you, Your Honor.

3 [Long pause]

4 REDIRECT EXAMINATION

5 Q BY MS. LaROSE: Mr. VanOpDorp, when John Needham
6 called you on March 19th -- I'm sorry...

7 When John Needham called you on March 18th, 2019,
8 did he ask you if you were working?

9 A Yes.

10 Q And what did you tell him?

11 A Yes.

12 Q And he didn't suggest that you get off the phone,
13 did he?

14 A No.

15 Q He didn't ask if you were on a piece of equipment,
16 did he?

17 A No.

18 Q Those -- I'm sorry...

19 The cell phone, the Company did not give you cell
20 phone. Did I understand your exchange with the Judge,
21 correctly?

22 A Correct. That was my personal cell phone.

23 Q Okay, and you never, in addition to that, got a
24 company-issued cell phone?

25 A No.

1 Q So, you didn't have a CB -- did you have a CB
2 radio?

3 A No.

4 Q Well, how did you communicate with other operators,
5 truck drivers, and the office?

6 A By my phone.

7 Q I'm sorry, you have to say that louder.

8 A By my phone.

9 Q Okay, using your cell phone?

10 A Using my cell phone, correct.

11 Q And if you were -- if you could not use that cell
12 phone, what would the consequences have been?

13 A If we would not use it?

14 Q If you were not allowed to use your cell phone on
15 the job, what would the consequences of that be?

16 A Oh, I mean, the guy wouldn't be lined up for
17 tomorrow, where you are getting materials you are trying
18 to call for it, or anything of that sort.

19 Q Instead of "any of that sort," please give me a
20 list. What would happen if you couldn't make phone
21 calls --

22 A Sorry. You wouldn't be able to -- we wouldn't be
23 able to line up our materials, our rock, and different -
24 - you know, if we needed dump trucks, needed piping
25 materials, or if we needed it tomorrow or right at that

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 moment, at that time. Kind of, you know, even if it
2 was, we were on a bigger jobsite and a guy was around a
3 building and you couldn't see him and you need him to
4 come over and help you or something, instead of walking
5 or running around the building, instead you would call
6 him on the cell phone and say, "Hey, I need your help
7 over here. Can you come back around."

8 So, yeah.

9 Q Well, I think you for that, Adam. That is helpful.
10 If -- if I understand you correctly, you actually
11 need to cell phone to communicate with other people on
12 the same jobsite.

13 MR. WRIGHT: Objection; asked and answered.

14 MS. LaROSE: He didn't answer, Your Honor.

15 JUDGE STECKLER: Go ahead and answer, Mr.
16 VanOpDorp.

17 THE WITNESS: Yeah, that --

18 JUDGE STECKLER: You can answer yes or no.

19 THE WITNESS: Yes.

20 Q BY MS. LaROSE: Those ADA panels that the Company
21 keeps raising -- I'm sorry, let's go back to the cell
22 phones for a second.

23 When you were on the phone with Company managers,
24 the cell phone, during work hours, were non-work
25 subjects discussed?

1 A Yes.

2 Q And you mentioned softball games or something like
3 that; is that right?

4 A Yes.

5 Q What do you mean about softball games? Who was the
6 softball --

7 A Well, Nick played in a pretty high-end league. He
8 did it for a while, and (b) (6), (b) (7)(C) are all in
9 softball. I mean, yeah, Nick was a really good softball
10 player, so we would know he would go off on weekends and
11 play men's fast-pitch softball, so sometimes we would
12 talk about how his weekend went and how he did on his
13 tournaments and stuff like that.

14 Q All right. And he -- so when -- so you had
15 conversations with Nick about the softball on your cell
16 phone at work? Did I understand that correctly?

17 A I mean, yeah. Yeah.

18 Q And when Nick was talking with you about softball,
19 he didn't ask if you were on a cell phone, did he? I'm
20 sorry, if you were working at the time, did he?

21 A No.

22 MR. WRIGHT: Leading, Your Honor.

23 Q BY MS. LaROSE: But he didn't ask you -- well, let
24 me -- I will withdraw the question.

25 Did Nick ask you whether you were on a machine when

1 he was talking with you about softball?

2 A No.

3 Q Those ADA panels, whose cell phone has where they
4 were at?

5 A I could not answer that question.

6 Q Okay. It was not you?

7 A No.

8 Q And I think you said that in the pictures, that the
9 panels did not look damaged?

10 A I mean, that is what it looked like to me.

11 Q On the picture, is what I am trying to clarify.

12 A Yeah, from the picture, it did not look damaged to
13 me.

14 JUDGE STECKLER: But that was only the top one,
15 right? You couldn't see the ones underneath.

16 THE WITNESS: Yeah, you can't -- yeah, exactly.

17 Q BY MS. LaROSE: The laser pole repair, that pole
18 was actually a homemade piece of pipe.

19 A Yes.

20 MR. WRIGHT: Objection, leading. He is answering
21 so fast to her leading questions that I am not having an
22 opportunity to object.

23 JUDGE STECKLER: Okay, Mr. VanOpDorp, I think we
24 have already established that this was homemade. How do
25 you know that it was homemade?

1 THE WITNESS: I mean, it just -- it wasn't a casted
2 aluminum like, you know, boughten pole. It was like out
3 of a metal shop, and it wasn't nothing like any GPS
4 poles like they have on their bulldozers and stuff -- on
5 other bulldozers, I would say.

6 JUDGE STECKLER: How could you tell the difference?

7 THE WITNESS: Oh, just by looking at it.

8 JUDGE STECKLER: Okay, did it work well before this
9 accident?

10 THE WITNESS: Yeah.

11 JUDGE STECKLER: Did you ever see this pole again
12 after this accident?

13 THE WITNESS: Like I said, I can't recall if we
14 ended up straightening it, or ended up putting a new one
15 on it. I don't -- I don't remember.

16 JUDGE STECKLER: So you don't remember if you saw
17 it again after the accident.

18 THE WITNESS: Correct.

19 JUDGE STECKLER: Okay, Ms. LaRose, you may
20 continue.

21 MS. LaROSE: Thank you.

22 Q BY MS. LaROSE: What was the diameter of this pipe,
23 Mr. VanOpDorp?

24 A Oh, maybe a one-inch pipe.

25 Q A one-inch pipe, okay.

1 And so it was not, if I understand you correctly,
2 was it something specifically designed for use in
3 connection with the laser?

4 A No. That is -- we had a laser receiver that you
5 could screw on to it.

6 Q My question was, was this pipe specifically
7 designed to hold some kind of laser apparatus?

8 A I don't know. It was just a pipe.

9 Q Okay. And when you say you don't know, are you
10 saying that it doesn't look like any other pipe you
11 might have seen?

12 A I mean, yeah. It looked like a steel metal pipe.

13 Q And I am just trying to clarify here. It didn't
14 look exceptional or --

15 MR. WRIGHT: Objection. I think we have covered
16 this issue.

17 JUDGE STECKLER: Okay, I will tell you what, Mr.
18 Wright. You can put it on your brief regarding
19 credibility. I will give you a running objection, too.

20 MR. WRIGHT: Thank you, Your Honor.

21 MS. LaROSE: Mr. Molinaro. I don't know where I
22 left off.

23 THE COURT REPORTER: You were just talking about if
24 it was an exceptional type of pipe that he has ever seen
25 before.

1 MS. LaROSE: Thank you.

2 Q BY MS. LaROSE: Just to clarify, was that an
3 exceptional or distinctive type of pipe?

4 A Right.

5 Q Okay, and would it be fair to say -- have you seen
6 -- well, let me ask it a different way.

7 If I walked into a hardware store, would I be able
8 to find a pipe like that?

9 A I -- I am not sure.

10 Q Okay. With respect to 11th Street, I think you
11 were asked if that was in two phases. Do you recall
12 that series of questions?

13 A Yes.

14 Q Okay, and regardless, did you understand that job
15 to be in two phases?

16 A Yes.

17 Q Okay, and the second phase involved cutting up the
18 street, or did it not?

19 A No, it did.

20 Q It did?

21 A Yes.

22 Q Okay. So, when the Company, and I don't know -- do
23 you know why it was two phases, or why you had to do it
24 in two separate --

25 A For -- there was a school on that street, so they

1 didn't want it to be happening -- we had to close the
2 entire street down, so we did it in the summer while the
3 school was out.

4 Q Okay, so let me be sure that I understand your
5 testimony.

6 Part of the work was performed when school was out,
7 and then -- I'm sorry, tell me how I got that wrong,
8 please.

9 A We started when the school year ended, when the
10 school let out for summer, then we finished the first
11 phase before they came back to school in late August or
12 whenever it was. So we had the entire street closed
13 down, so we had to get it re-opened for the school.

14 Q Okay, so the first phase took place when school was
15 out, when the kids were out for summer. Do I have that
16 right?

17 A Yes.

18 Q Okay, and then the second phase took place while
19 they were in school?

20 A Like -- I am not -- I wasn't on the job, but I
21 believe -- I believe they were out of school. Yeah, it
22 would have been the summer.

23 Q Well, the second phase is what I am talking about.
24 If you don't know the answer to this, that is fine, and
25 just tell me you don't have the answer.

1 A Yeah, yeah, I don't know.

2 Q All right.

3 MS. LaROSE: Those are all of my questions.

4 JUDGE STECKLER: Mr. Wright, additional questions?

5 MR. WRIGHT: Just one, I believe, Your Honor.

6 RECROSS EXAMINATION

7 Q BY MR. WRIGHT: Adam, Union's Counsel asked you
8 about that March 18th, 2019 phone call with Joe, and
9 whether or not you were operating equipment during that
10 call. Do you recall that testimony?

11 A Yes.

12 Q And you said you were operating equipment?

13 A I did not say that.

14 Q Were you?

15 A No.

16 Q You were not? What were you doing during that
17 call?

18 MS. LaROSE: Asked and answered. You asked him
19 this question previously, and he has already answered
20 both of these questions.

21 JUDGE STECKLER: Sustained.

22 MR. WRIGHT: That's all I have.

23 JUDGE STECKLER: Okay, Mr. Williams?

24 MR. WILLIAMS: *[No audible response]*

25 JUDGE STECKLER: You are shaking your head no.

1 MR. WILLIAMS: I'm sorry, Your Honor. No further
2 questions.

3 JUDGE STECKLER: Ms. LaRose, anything else come to
4 your mind?

5 MS. LaROSE: No. Thank you, Your Honor.

6 JUDGE STECKLER: All right, Mr. VanOpDorp, you are
7 about to be excused as a witness. You might be recalled
8 later. I am not sure how long this hearing is going to
9 take, but during all of this time, please do not discuss
10 your testimony with anyone, and I mean, not even a dog.

11 THE WITNESS: All right.

12 MS. LaROSE: And I am sure that Ms. LaRose or Mr.
13 Williams will let you know when the hearing is
14 completed.

15 MR. WRIGHT: Your Honor, I am sorry...

16 May I, before you release the witness, ask one
17 additional question?

18 JUDGE STECKLER: Okay.

19 Q BY MR. WRIGHT: And Adam, I am just wondering, can
20 you give me your address, your residence address right
21 now currently, where you reside?

22 MS. LaROSE: Objection to relevance. I mean, is
23 this going to the subpoena issue somehow, Counsel?

24 MR. WRIGHT: Yeah, in case we have to serve one.

25 JUDGE STECKLER: Okay, Mr. VanOpDorp, go ahead.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: Okay, 8407 51st Street Court, Coal
2 Valley, Illinois 61240.

3 MR. WRIGHT: Thank you.

4 THE WITNESS: You're welcome.

5 JUDGE STECKLER: Mr. VanOpDorp, do you understand
6 the instructions I gave you about not talking about the
7 case?

8 THE WITNESS: I do.

9 JUDGE STECKLER: Thank you.

10 *[Witness excused]*

11 JUDGE STECKLER: We will go off the record while
12 General Counsel gets his next witness.

13 *[Off the record]*

14 THE COURT REPORTER: We are on, Judge.

15 JUDGE STECKLER: Thank you.

16 General Counsel may call its next witness.

17 MR. WILLIAMS: At this time, General Counsel calls
18 Chad Havill to the stand.

19 JUDGE STECKLER: Mr. Havill, please raise your
20 right hand.

21 (Whereupon,

22

CHAD HAVILL

23 having been sworn/affirmed, was called as a witness
24 herein, and was examined and testified via video-
25 conference, as follows:)

1 JUDGE STECKLER: Please state your name and spell
2 it for the record.

3 THE WITNESS: Chad Havill, C-h-a-d, H-a-v-i-l-l.

4 JUDGE STECKLER: Mr. Havill, have you discussed
5 this case with anybody since yesterday morning?

6 THE WITNESS: No.

7 JUDGE STECKLER: Okay, is there anybody in the room
8 with you?

9 THE WITNESS: No.

10 JUDGE STECKLER: Okay, General Counsel, you may
11 proceed.

12 MR. WILLIAMS: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 Q BY MR. WILLIAMS: Mr. Havill, are you currently
15 employed?

16 A Yes.

17 Q By who?

18 A McCleary Excavating.

19 Q Okay, and how long have you been there?

20 A Since March of this year.

21 Q And what is your current position?

22 A Heavy equipment operator.

23 Q Okay, now prior to working for McCleary, did you
24 ever work for Needham Excavating, Inc.?

25 A Yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And when did you first -- when did you begin
2 working for them?

3 A April of 2019.

4 Q Okay, and then when did your employment end?

5 A July of 2019.

6 Q Okay, and when you worked at Needham Excavating,
7 Inc., what was your position?

8 A Heavy equipment operator.

9 Q And what were your duties?

10 A I would run various pieces of heavy equipment;
11 dozer, excavator, skid steer, tractor, and perform
12 excavation practices on their jobsite.

13 Q Okay. Now, are you familiar with the International
14 Union of Operating Engineers Local 150Z?

15 A Yes.

16 Q And to the best of your knowledge, did the
17 International Union of Operating Engineers Local 150
18 attempt to organize Needham Excavating, Inc.?

19 A Yes.

20 Q And how did you come to find that out?

21 A Through Adam VanOpDorp.

22 Q And when was that?

23 A At the beginning of employment.

24 Q At the beginning of employment? So that would have
25 been in April of 2019?

1 A Yes.

2 Q And how did you find that out?

3 A Just by showing up, you know the first day of work
4 and noticing Adam's apparel that he was wearing, and
5 some of the conversations that were going on.

6 Q Okay, what -- what type of apparel was he wearing?

7 A Local 150 insignia.

8 Q On what?

9 A On his shirt, his sweatshirt, hat, pickup truck.

10 Q Okay, what color was his shirt, do you remember?

11 A Bright yellow. I think he had a black sweatshirt,
12 as well.

13 Q Okay, was the Union insignia on the front or back
14 of his shirt?

15 A Front and back.

16 Q And how often would he wear the shirt?

17 A Quite regularly. I mean, I didn't work with him
18 every day of the week, but I saw him -- almost every
19 time I seen him, he had it on, so...

20 Q Okay. Now, directing your attention to July 1st,
21 2019, what, if anything, happened on that date that you
22 recall?

23 A On July 1st, we were working at Dan Dolan
24 Townhomes.

25 Q You -- when you say "we," who?

1 A Myself, Adam VanOpDorp, Joe Neal, and Sam, the
2 plumber that they had hired to be on the job, a
3 certified plumber.

4 Q And who was Joe Neal?

5 A He was a laborer at the time.

6 Q Okay, and Adam VanOpDorp was -- what was his
7 position?

8 A Heavy equipment operator.

9 Q Okay, and what were you supposed to do on this
10 jobsite?

11 A Various site grading. At this time, we were
12 installing sanitary sewer.

13 Q Okay, and what time did you arrive at the jobsite
14 that day?

15 A 6:30 a.m.

16 Q Okay, and when you arrived, were you the first one
17 there?

18 A Sam and Adam were already present at the job when I
19 pulled up.

20 Q And how long did you work on the jobsite?

21 A Until 4:30 p.m. that day.

22 Q Okay, and when you left was Mr. VanOpDorp still on
23 the jobsite?

24 A Yes.

25 Q Okay, so you don't know when he left?

1 A No.

2 Q So, just to be clear, Mr. VanOpDorp was present at
3 Dan Dolan's job on July 1st, 2019, before you arrived?

4 A That's correct.

5 Q And Mr. VanOpDorp was on the job at Dan Dolan's on
6 July 1st, 2019, when you left.

7 A Right.

8 JUDGE STECKLER: Mr. Havill, what was Mr. VanOpDorp
9 doing when you arrived on the scene?

10 THE WITNESS: He was setting up GPS and having a
11 conversation with Sam.

12 JUDGE STECKLER: Once you got there, did you also
13 get in on the conversation with Mr. VanOpDorp and Sam?

14 THE WITNESS: Just got out of my truck and
15 proceeded my duties and then went to work. I didn't
16 engage in conversation with them, no.

17 JUDGE STECKLER: What kind of work were you doing
18 on the truck?

19 THE WITNESS: I got out of my truck and then went
20 to get my excavator ready to work.

21 JUDGE STECKLER: Mr. Williams, you may proceed.

22 Q BY MR. WILLIAMS: What type of work did Adam
23 VanOpDorp perform on the Dan Dolan job that day?

24 A Excavation operations.

25 Q Okay, what does that entail?

1 A He was using an excavator to trench and install
2 pipe.

3 Q Okay. Was he the one installing the pipe?

4 A Can you repeat that? You cut out.

5 Q Okay, was he the one installing the pipe?

6 A We had a laborer on-site that was helping with
7 that.

8 Q Okay, so what was the laborer's responsibility with
9 respect to laying the pipe?

10 A He -- he would set the laser up, operate the story
11 pole, make sure that the proper grade was achieved while
12 Adam was digging or I was digging, and then he would be
13 in the trench when the pipe was set.

14 Q Okay, so whose responsibility is it to make sure
15 the pipe is set?

16 A The laborer.

17 Q And when you say "set," what do you mean by set?

18 A That it is at the proper grade that the plan calls
19 for.

20 Q Okay, and why would it be the responsibility -- the
21 responsibility of the pipe setter as opposed to the
22 heavy equipment operator?

23 A Well, the laborer has eyes on the trench and, you
24 know, he is obviously running the laser, and he knows
25 when he is actually on grade. The heavy equipment

1 operator can get close, and he relies on hand signals or
2 verbal communication from -- from the laborer to know
3 when they are on grade and ready to set the pipe.

4 Q Okay. Now, you testified that you left the jobsite
5 at 4:30?

6 A Yes.

7 Q Where did you go?

8 A To the employer's shop.

9 Q And while you were at the shop, did you have a
10 discussion with Nick Needham or Curt McKinley?

11 A Yeah, I may have. I don't recall exactly that day,
12 but there were various conversations when we went to the
13 shop.

14 Q Okay. Did you have a conversation with either Curt
15 McKinley or Nick Needham about the July -- about Dan
16 Dolan's job on July 1st, 2019, that you can recall?

17 A Well, I am sure we discussed the day's events, so -
18 - but I can't recall specifics.

19 Q Okay. Do you ever remember telling either Curt or
20 Nick Needham that when -- when you saw Adam?

21 A No.

22 Q Well, I guess more specifically, did you tell Nick
23 Needham or Curt McKinley that Adam VanOpDorp was at the
24 job site before you arrived and after you left?

25 A No, they were aware he was there. He was working

1 with me.

2 Q Okay.

3 JUDGE STECKLER: What, if any, conversation did you
4 have, Mr. Havill, on July 8th, about Mr. VanOpDorp's
5 timecards?

6 THE WITNESS: Joe called me on the 8th and asked me
7 what -- what time Adam had left that day.

8 JUDGE STECKLER: And what happened then?

9 THE WITNESS: Well, he asked me what time Adam
10 left, and I told him that, you know, when I left, he was
11 still there. So, I -- I didn't know what time Adam had
12 put there. I just told him that he was still there when
13 I left.

14 JUDGE STECKLER: What, if anything, happened after
15 that?

16 THE WITNESS: Well, I asked him why, you know, and
17 he kind of started around, and said he had a plan, but
18 he couldn't reveal his cards, so.

19 JUDGE STECKLER: Was that his phrase, that "he
20 couldn't reveal his cards?"

21 THE WITNESS: Yes.

22 JUDGE STECKLER: Mr. Williams, you may proceed.

23 Q BY MR. WILLIAMS: And at some point, you discovered
24 that Mr. VanOpDorp had been discharged.

25 A Yes.

1 Q When -- when were you informed that he had been
2 discharged?

3 A I -- I received a phone call from Adam, and then we
4 had a -- we had a -- it was a Group Meet chat, a text
5 sent out as well that week.

6 Q Okay.

7 A Around eight.

8 Q And what did he tell you about his discharge?

9 A I -- he basically said that he had been terminated,
10 and I asked him why, and he referenced it was because of
11 some practices at the job they had over in Moline the
12 previous year, before my employment.

13 Q Is that the 11th Street - Moline job?

14 A That's correct.

15 Q Did he mention any other reason for his discharge?

16 A No, just that. They had blamed him for laying some
17 pipe wrong at that job.

18 [Long pause]

19 Q What are employees' normal work hours?

20 A I mean it varies in the construction world. It can
21 be -- on average, I mean, during that timeframe of the
22 year, we were working an average of ten -- of ten hour
23 days at least, depending on the weather. Some days we
24 were there you know, till dark. But it just depends on
25 where we were, what point of the job we were in, and if

1 we were close to finish and needed to get something
2 wrapped up and move on to the next job, but I mean, we
3 were -- we were working a fair amount of hours.

4 Q Okay.

5 A Like I said, weather allowed...

6 MR. WILLIAMS: I have no further questions, Your
7 Honor.

8 JUDGE STECKLER: Before you start, Ms. LaRose...

9 Mr. Havill, under what circumstances did you leave
10 employment with NEI?

11 THE WITNESS: Went on strike.

12 JUDGE STECKLER: When was that?

13 THE WITNESS: That would be the day or day after
14 the election. I believe it was a Monday.

15 JUDGE STECKLER: Was the election on a Sunday?

16 THE WITNESS: No, it was on a Friday.

17 JUDGE STECKLER: Did you go on strike by yourself?

18 THE WITNESS: Well, me and Spencer Werthmann went
19 on strike.

20 JUDGE STECKLER: Did you ever make an unconditional
21 offer to return?

22 THE WITNESS: No.

23 JUDGE STECKLER: Ms. LaRose, you may continue, or
24 start.

25 MR. CONNOLLY: If you can give me just one moment,

1 Your Honor, I am going to be doing --

2 JUDGE STECKLER: Okay, we will go off the record
3 for a moment, please.

4 [Off the record]

5 JUDGE STECKLER: As they say, make it so.

6 THE COURT REPORTER: We are on.

7 DIRECT EXAMINATION

8 Q BY MR. CONNOLLY: Do you mind if I call you Chad?

9 A Go ahead.

10 Q Okay, Chad, when did you generally report to work
11 in the morning?

12 A It -- it would just depend. Like I said we average
13 -- we were normally on the clock at 6:30 to 7:30 a.m.
14 There might have been a few instances of earlier than
15 that or later, but it just depends on certain
16 conditions.

17 Q Okay. Now, Chad, was there a point when the
18 Company tried to make you aware that Adam had been
19 discharged?

20 A They just sent a Group Meet chat out.

21 Q Okay, and what is Group Meet?

22 A It is an app that Needham used to state, you know,
23 "there is a machine broke down," or you know, something
24 was left out and you know, somebody didn't -- didn't
25 grease the machine, didn't fill the machine, didn't

1 clean the track off on the machine, or like I said, it
2 was broke down. It is just a way to notify the
3 employees, an easy way to communicate.

4 Q Okay, so what -- in a Group Meet, how many of the
5 employees are a part of this group messaging thread?

6 A I believe it was -- at that time, it was the ones
7 all pertaining to heavy equipment operators, mechanics,
8 and guys that did various daily tasks, you know, with
9 the equipment.

10 Q Okay. Now, you said that the Company informed you
11 via Group Meet that Adam had been discharged?

12 A Yes.

13 MR. CONNOLLY: Okay, Your Honor, request
14 information to put Exhibit -- Union's Exhibit 42 on the
15 screen.

16 JUDGE STECKLER: Yes, please.

17 MR. CONNOLLY: Thank you.

18 **(Union's Exhibit 42, marked for identification.)**

19 Q BY MR. CONNOLLY: Okay, Chad, I would like you to
20 go ahead and review this exhibit on the screen. Can you
21 see it okay? Do I need to zoom in?

22 A Yeah, I can see it.

23 Q Okay, let me know when you are done reviewing.

24 *[Long pause]*

25 A I -- I am finished.

1 Q Okay, can you please tell me what this is on the
2 screen?

3 A Just a notification from Nick Needham that Adam had
4 been terminated and we were supposed to let the owners
5 know if he was on any equipment or jobsites or any
6 Needham property.

7 Q And on the screen it is showing a message toward
8 the top, and then there is is -- and the message -- the
9 second message below it, where it says, "NN" next to it,
10 is that the message that you are talking about that
11 informed you of what -- that the Company had discharged
12 Adam?

13 A Yes.

14 Q Okay, and above that, there appears to be a gray
15 highlighted area that says, "Clint McKinley removed
16 Lefty from the group."

17 A Yes.

18 Q Okay, and who is Lefty?

19 A Adam VanOpDorp.

20 Q Okay, and that is a nickname he went by, correct?

21 A Yes.

22 Q And on Monday, that is when that happened, on
23 Monday, at 3:46 p.m.?

24 A Correct.

25 MR. CONNOLLY: Okay, Your Honor, at this time, I

1 would like to move for Union's Exhibit 42 to be admitted
2 into the record.

3 MR. WILLIAMS: No objection from General Counsel.

4 MR. NIEW: No objection from the Employer.

5 JUDGE STECKLER: Union's Exhibit 42 is received.

6 **(Union's Exhibit 42, received into evidence.)**

7 MR. CONNOLLY: Thank you.

8 Q BY MR. CONNOLLY: And you had mentioned a ULP
9 strike -- I'm sorry, you mentioned a strike that you had
10 gone on.

11 MR. CONNOLLY: One moment, Your Honor.

12 *[Long pause]*

13 Q BY MR. CONNOLLY: Please strike that question.

14 I would like to go back to Union's Exhibit 42 for a
15 moment, Chad.

16 You don't -- at the time that it said, "Clint
17 McKinley removed Lefty from the group," did you know
18 what that meant?

19 A Yeah, it just meant that Clint had removed him from
20 access to Needham's Group Meet on the app.

21 Q Could -- could you remove anyone you wanted to from
22 this Group Meet text message thread?

23 A No.

24 Q Do you know who did have the authority to remove,
25 outside of Clint? Was anyone else able to remove anyone

1 from the group?

2 A No, just the owners.

3 Q Okay.

4 MR. CONNOLLY: I have no further questions, Your
5 Honor.

6 JUDGE STECKLER: Mr. Niew, I take it you are
7 questioning today?

8 MR. NIEW: That is correct.

9 CROSS EXAMINATION

10 Q BY MR. NIEW: Mr. Havill -- Havill, I am the
11 attorney for the Employer, and I would like to clarify a
12 couple things.

13 On the job that you were on with -- a Dan Dolan
14 project, was it not?

15 A Are you talking about a job I was at with Adam?

16 Q That's correct, and that is a residential project.

17 A Correct.

18 Q And on all residential projects that you have
19 always been on, you cannot get out of that truck and do
20 any work until after 7:00 a.m. Isn't that correct?

21 A No, that's not correct.

22 Q How is that wrong?

23 A We can get -- we can grease machines, we can get
24 ready to go on our various work duties, fuel machines,
25 go over the plan for the day what we are going to do.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q But that is sitting in the truck.

2 A No, that is not sitting in the truck.

3 Q Didn't Needham Excavating have a standard starting
4 time of 7:00 a.m.?

5 A No.

6 Q If other employees had testified that that's
7 correct, would they be wrong?

8 MR. WILLIAMS: Objection, argumentative.

9 JUDGE STECKLER: Sustained.

10 Q BY MR. NIEW: Now, on July 1st, you went back to
11 Needham's headquarters, did you not?

12 A Yes.

13 Q And who did you meet with there?

14 A Like I said, you know, it was various shop people
15 probably in the shop, and you know, whenever we went
16 back, there was discussions with Curt or Nick or
17 whoever.

18 Q Okay, you did talk to Curt and Nick on that
19 afternoon, correct?

20 A Like I said, I don't -- I am sure I did, but I
21 don't recall them, but...

22 Q And you told them that when you left the job, Adam
23 had already been gone at 3:30.

24 MR. WILLIAMS: Objection. That is not his
25 testimony.

1 JUDGE STECKLER: Mr. Havill, what Mr. Niew said, is
2 that something that you might have said?

3 THE WITNESS: No.

4 JUDGE STECKLER: You may continue, Mr. Niew.

5 Q BY MR. NIEW: Now, at some point in time, you were
6 not a big fan of Adam's work habits. Would that be a
7 fair statement?

8 A No.

9 Q Now, do you know Dan Needham?

10 A Yes.

11 Q And you called Dan Needham, did you not, and
12 complain about Adam slowing down the work?

13 A I have never had a conversation with Dan Needham
14 regarding Adam VanOpDorp.

15 Q Do you know who Caleb Hunter is?

16 A Yes.

17 Q Do you know if he ever complained about you and
18 starting times?

19 A No.

20 Q Do you know Tracey Marshall?

21 A Yes.

22 Q And did you call Tracey Marshall in 2019 and tell
23 them that Adam was talking to Local 150 during working
24 hours?

25 MR. WILLIAMS: Objection, Your Honor. Relevancy

1 and beyond the scope of direct.

2 JUDGE STECKLER: Let me hear the question again,
3 Mr. Niew, so that I can make sure I understand it
4 correctly.

5 Q BY MR. NIEW: And -- you know who Tracey Marshall
6 is, correct?

7 A Yes.

8 Q And did you tell anybody from management that
9 Tracey Marshall -- that Adam got off the machine to talk
10 to Union reps during working hours?

11 MR. WILLIAMS: And again, Your Honor, objection.
12 Relevancy and beyond the scope of direct.

13 JUDGE STECKLER: Sustained.

14 Q BY MR. NIEW: On July 3rd did you talk to Nick and
15 Tracey Marshall and tell them that Adam sat outside his
16 cab and talked to former employee, Nolan Moore, for
17 about 1.75 hours?

18 MR. WILLIAMS: Continuing objection, Your Honor.
19 Same reason.

20 JUDGE STECKLER: Sustained.

21 MR. NIEW: I have no further questions.

22 JUDGE STECKLER: Mr. Williams, do you have any
23 redirect?

24 MR. WILLIAMS: No, Your Honor.

25 JUDGE STECKLER: Mr. Connolly?

1 MR. CONNOLLY: No, Your Honor.

2 JUDGE STECKLER: Mr. Havill, you are about to be
3 excused as a witness, however you may be subject to
4 recall. Because of the nature of this hearing, the
5 witnesses are not allowed to discuss their testimony
6 with anyone until after the hearing is over.

7 Do you understand these instructions?

8 THE WITNESS: Yes.

9 JUDGE STECKLER: Okay, I am sure at some point,
10 either Mr. Williams or Ms. LaRose or Mr. Connolly will
11 advise you when the hearing is over.

12 With that, you may exit the room.

13 *[Witness excused]*

14 JUDGE STECKLER: General Counsel, do you have
15 another witness this afternoon, or are we wrapping up?

16 MR. WILLIAMS: What I propose, and let's see if
17 everybody --

18 JUDGE STECKLER: Mr. Havill, you can leave.

19 You don't have to listen to this part.

20 MR. WILLIAMS: What I propose is that General
21 Counsel has possibly two more witnesses, but I would
22 propose that now would probably be a good time to break,
23 and I was wondering if General Counsel could put those
24 two witnesses on, starting on Monday. The testimony
25 shouldn't -- should be somewhere between one and a half

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 and two hours, max, and so at that time, presumably,
2 General Counsel will rest, if that -- if that's okay
3 with you.

4 JUDGE STECKLER: Are the other parties --

5 MR. NIEW: This is Stan Niew. Does that mean you
6 are going to call Joe Needham back immediately after
7 those two witnesses?

8 *[Long pause]*

9 JUDGE STECKLER: Let's go off --

10 MR. WILLIAMS: Probably not.

11 JUDGE STECKLER: -- the record.

12 *[Off the record]*

13 THE COURT REPORTER: Okay.

14 JUDGE STECKLER: We are back on the record.

15 During the break we had discussion about whether to
16 call additional witnesses today. We will not. Mr.
17 Williams will present two witnesses that are supposed to
18 be short on Monday morning. Ms. LaRose to follow. We
19 are not sure when Mr. Joe Needham is being recalled at
20 this point.

21 The other thing is that the Employer is checking
22 this weekend for disciplinary records; is that correct?

23 MR. NIEW: That is correct.

24 JUDGE STECKLER: Thank you, Mr. Niew.

25 MR. WRIGHT: *[Indiscernible and garbled - speaking]*

1 *away from the microphone]*

2 JUDGE STECKLER: Mr. Wright, Mr. Wright, you are
3 kind of in and out. We can't hear you.

4 MR. WRIGHT: Mr. Williams, I just want to confirm,
5 it is for those three employees that I referenced in my
6 e-mail this morning, correct? I just want to make sure
7 I look for the right thing.

8 MR. WILLIAMS: Yes, but -- but the other part had
9 to do -- not even just discipline.

10 So I have just a couple issues for people who could
11 have been laid off, and the discharges, too. So I have
12 just a compilation. Is there any way to check on the
13 underlying documents?

14 If -- let's just do it like this.

15 Start with the discharges. If you have got time to
16 look at the layoffs, then we can deal with that later,
17 but the discharges, let's start with that. Does that
18 make sense?

19 MR. WRIGHT: Yeah, I will start with the
20 discharges, and Nick is representing to me, they don't
21 give individuals layoff letters or something of that
22 nature.

23 MR. WILLIAMS: Then that takes care of that.

24 MR. WRIGHT: Okay. Okay.

25 JUDGE STECKLER: Okay, in that case, we will

1 reconvene on Monday morning at 8:30 Central, 9:30
2 Eastern, correct?

3 MR. WILLIAMS: Correct. Yes, Your Honor.

4 JUDGE STECKLER: Okay, I hope everyone has a good
5 weekend.

6 MR. WILLIAMS: One other matter from General
7 Counsel.

8 Has Respondent had a chance to look at the revised
9 Formal Papers?

10 MR. NIEW: No, we have not.

11 MR. WILLIAMS: Okay, that's fine.

12 So on Monday, pursuant to their review, and I am
13 not trying to rush them, but whenever you get a chance
14 to look at them, hopefully everything is okay now, then
15 I will move for the admission of the Formal Papers on
16 Monday, or whenever Respondent has a chance to look at
17 them.

18 Sorry, thank you.

19 JUDGE STECKLER: All right. In that case, there
20 are some observers at the line, they can stay on.
21 Everyone else, have a good weekend.

22 MS. LaROSE: Thank you, Your Honor.

23 MR. WILLIAMS: Thank you.

24 JUDGE STECKLER: We are in recess.

25 Off the record.

1 *[Whereupon, the hearing was adjourned at 4:30 p.m., until*
2 *8:30 a.m., Monday, April 26, 2021.]*

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), in the matter of **NEEDHAM EXCAVATING, INC. (Respondent)** and **INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO, (Charging Party)**, Case No. 25-CA-239166 et al, on April 23, 2021, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, the hearing, that the exhibits (if any) are complete and no exhibits received in evidence or in the rejected exhibit files are missing.



David Molinaro, Official Reporter

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case Nos: 25-CA-239166, 25-CA-244670, 25-CA-245763 &
25-RC-243735

NEEDHAM EXCAVATING, INC.,

Respondent,

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL
150, AFL-CIO,

Charging Party.

Place: Video Conference
Date: April 26, 2021
Pages: 526 through 779
Volume: 3 of 4

OFFICIAL REPORTERS

ARS REPORTING
22052 West 66th Street, Suite 314
Shawnee, Kansas 66226
(913) 422-5198

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25

In the Matter of:

NEEDHAM EXCAVATING, INC.,

Respondent,

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150, AFL-CIO,

Charging Party.

Case 25-CA-239166

Nos. 25-CA-244670

25-CA-245763

25-RC-243735

The above-titled matter came on for hearing via
video conference, pursuant to Notice, before **THE**
HONORABLE SHARON L. STECKLER, Administrative Law Judge,
on Monday, the 26nd of April, 2021, at 8:32 a.m.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

A P P E A R A N C E S

On Behalf of the General Counsel:

RAIFAEEL WILLIAMS, ESQ.
National Labor Relations Board - Region 25
Minton-Capehart Federal Building
575 North Pennsylvania Street, Room 238
Indianapolis, Indiana 46204
Phone: (317) 991-7630
Fax: (317) 226-5103
E-mail: raifael.williams@nlrb.gov

On Behalf of the Respondent:

STANLEY NIEW, ESQ.
JEFFREY WRIGHT, ESQ.
Law Offices of Stanley E. Niew, P.C.
1000 Jorie Boulevard, Suite 206
Oak Brook, Illinois 60523
Phone: (630) 586-0110
Fax: (630) 586-0120
E-mail: sniew@senlaw.net
jwright@pappaswright.com

ARS REPORTING LLC

22052 West 66th Street, Suite 314
Shawnee, Kansas 66226
Phone: (913) 422-5198

A P P E A R A N C E S

(Continued)

On Behalf of the Charging Party:

ELIZABETH A. LaROSE, ESQ.

JAMES CONNOLLY, ESQ.

International Union of Operating Engineers,

Local 150, AFL-CIO, Local 150 Legal Department

6140 Joliet Road

Countryside, Illinois 60525

Phone: (708) 579-6633

Fax: (708) 588-1647

E-mail: elarose@local150.org

Courtroom Deputy:

SONJA SPIELBERG

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1				<u>I N D E X</u>			
2							
3							
4	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>COURT</u>	<u>VOIR DIRE</u>
5							
6	Brett Gripp	537	575	594		569	
7		552				572	
8		571					
9							
10	Spencer Werthmann	598	615	622	623		
11							
12	Joe Needham	626					
13	(Recalled)						
14							
15	Aaron Hamilton	635	656	661		661	
16							
17							
18	Ian Macumber	665	682	691		689	
19			685	693		691	
20							
21							
22	Amber Nielsen	696	714			703	
23			716			716	
24						723	
25							

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1							
2							
3							
4	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>COURT</u>	<u>VOIR DIRE</u>
5							
6							
7	Brandon McKay	729	737	741		739	
8							
9	Tracey Marshall	745	754	763		751	
10			759			760	
11							
12							
13							
14	Caleb Hunter	767	772				
15			774				
16							
17							
18							
19							
20							
21	Mr. Niew (Respondent)					630	
22							
23							
24							
25							

Opening Statement

1		<u>E X H I B I T S</u>		
2				
3	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>	
4	General Counsel			
5	1	Previously Marked		532
6	9		546	547
7	10		546	548
8	13		742	743
9				
10	Union			
11	4		559	559
12	10		607	608
13	12		566	566
14	13		565	566
15	22		561	561
16	29		611	614
17	30		609	609
18	83	Previously Marked		535
19	84		535	597
20				
21				
22				
23				
24				
25				

P R O C E E D I N G S

[Time Noted: 8:32]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE STECKLER: Good morning. This is the third day of the Needham Excavating hearing, a consolidated C and R case.

Before we call in the first witness, there were some disciplinary records that Respondent owed. Have those been produced?

MR. WRIGHT: Yes, Judge.

JUDGE STECKLER: Okay.

MR. WILLIAMS: Yes, they have been produced to the General Counsel, and the General Counsel is satisfied with what has been produced, so we're okay there.

JUDGE STECKLER: Okay. Did everyone get an opportunity to review GC-1, the formal papers?

MR. WRIGHT: Yes, Judge. No objections from Respondent.

MS. LAROSE: And no objections from Charging Party, Your Honor.

JUDGE STECKLER: All right. GC-1, the formal papers, are admitted.

(General Counsel's Exhibit No. 1 received into evidence.)

There were a couple of issues with exhibits over the last previous three days. I wanted to check whether admission was going to take place on Respondent's 4 that

1 involved the pole, the laser pole.

2 MR. WRIGHT: Your Honor, we would move for admission.
3 I believe if my recollection is correct, Mr. VanOpDorp said
4 he did send that text and that it refreshed his
5 recollection. We would move for at least that portion of
6 Exhibit 4 to be admitted. The remainder of Exhibit 4, Your
7 Honor, my assistant is going to be re-bate stamping so that
8 we have 4(a), 4(b), 4(c), etcetera, because there are
9 different texts groups there within Exhibit 4.

10 JUDGE STECKLER: Let's wait until they're marked then
11 on 4. In Union 54, and I don't recall what that is right
12 off the top of my head --

13 COURT REPORTER: Judge, I think it was 53.

14 JUDGE STECKLER: Oh, 53. Okay. I'm sorry.

15 MS. LAROSE: Oh, Your Honor, that was a decision that
16 we were going to introduce it just for your reference; a
17 Board decision. It is available on Westlaw, so we don't
18 need to introduce that.

19 JUDGE STECKLER: The other question was the transcript
20 of I believe it was GC-6 to go with the tape in 5. Did
21 everyone have a chance to review and make any corrections
22 over the weekend?

23 MR. WRIGHT: Your Honor, Respondent has had a chance
24 to review. Unfortunately, it was not able to get the
25 proposed revisions over to opposing counsel until this

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 morning, so I don't think they would have had time to review
2 those proposals just yet, but there's nothing mind blowing
3 in terms of our requested revisions.

4 JUDGE STECKLER: Okay. We'll wait and hold on GC-6.
5 One thing I wanted to make clear on the record as well,
6 there have been occasions where counsel has nodded yes/no
7 when the witness prepares to answer, this is not acceptable.
8 I will point it out on the record if I notice it. If I
9 don't notice it, the deputy will make note of them as well.
10 And if it starts happening consistently, I'm going to block
11 out the people's answers so that you can't give that. Also,
12 I want to remind you that no chats should be taking place
13 privately throughout the process whether it's email, IMs, or
14 through the chat function of Zoom. Is everyone clear on
15 that?

16 MR. WILLIAMS: Yes, Your Honor.

17 MS. LAROSE: Yes, Your Honor.

18 MR. WRIGHT: Yes, Your Honor.

19 JUDGE STECKLER: Okay. Any other preliminary matters
20 before we get the first witness of the day?

21 MS. LAROSE: Yes, Your Honor. Union Exhibit 83 was the
22 subpoena to the Employer in this case which had planned to
23 introduce, but it was not -- it had not been uploaded to
24 share at the time. It has been uploaded, and I don't think
25 there was any objection to it. So we would just move to

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 admit that now.

2 MR. WRIGHT: No objection.

3 MR. WILLIAMS: No objection, Your Honor.

4 JUDGE STECKLER: Union's 83 is admitted.

5 **(Union's Exhibit No. 83 received into evidence.)**

6 MS. LAROSE: And then also, Your Honor, I realized
7 that we entered an exhibit regarding the Employer's ULP
8 charge in the promise -- with regard to the promise of
9 benefit allegations, and we admitted the second amended
10 charge, the Region's letter dismissing as well as the
11 decision on appeal. I would also like to enter, and I'm
12 going to make it Union's 84, the first amended charge. I do
13 not have that uploaded yet, Your Honor, but I will get it
14 uploaded before we break today.

15 **(Union's Exhibit No. 84 marked for identification.)**

16 JUDGE STECKLER: Okay.

17 MR. WRIGHT: Assuming it is what Ms. LaRose says it
18 is, then we have no objection to it.

19 MR. WILLIAMS: The General Counsel has no objection.

20 JUDGE STECKLER: Thank you. Once it's uploaded,
21 everybody can take a quick look and make sure, but under
22 those circumstances, Union's 84 will be admitted.

23 Additional preliminary matters? If not, General
24 Counsel may call its next witness.

25 MR. WILLIAMS: Yes. At this time, Your Honor, General

1 Counsel would like to call Brett Gripp to the stand.

2 JUDGE STECKLER: Mr. Gripp, if you can hear me, you
3 need to unmute as well as turn your camera on. There we go.
4 Thank you, Mr. Gripp.

5 THE WITNESS: Yes.

6 JUDGE STECKLER: Good morning.

7 (Whereupon,

8 **BRETT GRIPP**

9 having been sworn/affirmed, was called as a witness herein
10 via Zoom, and was examined and testified as follows.)

11 JUDGE STECKLER: Please state your name and spell it
12 for the record.

13 THE WITNESS: Brett M. Gripp, B-r-e-t-t, middle
14 initial M, G-r-i-p-p.

15 JUDGE STECKLER: Mr. Gripp, are you in a room with
16 anyone?

17 THE WITNESS: No.

18 JUDGE STECKLER: Is the door open or shut?

19 THE WITNESS: The door is shut.

20 JUDGE STECKLER: Have you discussed your testimony
21 with anyone since last week?

22 THE WITNESS: No.

23 JUDGE STECKLER: Like Thursday morning?

24 THE WITNESS: No.

25 JUDGE STECKLER: Okay. Do you have any documents in

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 front of you?

2 THE WITNESS: No.

3 JUDGE STECKLER: General Counsel, you may proceed.

4 DIRECT EXAMINATION

5 Q BY MR. WILLIAMS: Mr. Gripp, are you currently
6 employed?

7 A Yes.

8 Q And by whom are you employed?

9 A Barnhart Crane and Rigging in East Moline, Illinois.

10 Q And how long have you been employed there?

11 A Since officially July 11 of 2019.

12 Q And what is your position?

13 A I'm an oiler on a 200-ton crane.

14 Q Prior to being employed by Barnhart, were you also
15 employed by Needham Excavating, Inc.?

16 A Yes.

17 Q And when were you employed there?

18 A I started and officially got hired October 11, 2018.

19 Q And when did your employment end?

20 A June 10, 2019.

21 Q And when you were employed at Needham Excavating, Inc.,
22 what was your position?

23 A I was hired as a driver/operator.

24 Q Okay. And what were your duties as a driver/operator?

25 A I was to drive dump trucks, 18-wheel semis with a

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 lowboy, and then in various situations I operated machinery
2 when needed.

3 Q And when you worked for Needham Excavating, Inc., did
4 you report to anyone?

5 A I normally reported to Curt McKinley.

6 Q And who is Curt McKinley?

7 A Curt McKinley is a manager/superintendent/owner. I
8 don't know what you would call him.

9 Q Okay. Now are you familiar with the International
10 Union of Operating Engineers Local 150?

11 A Yes.

12 Q Now during your employment with Needham Excavating,
13 Inc., was there any effort by the International Union of
14 Operating Engineers Local 150 to unionize Needham
15 Excavating, Inc.?

16 A Yes.

17 Q And how do you know that?

18 A Because I was involved with it.

19 Q Okay. And how did you initially become involved with
20 it, with the organizing effort?

21 A Adam VanOpDorp approached me and said it would be a
22 good idea and that he had talked to Shannon Vickers.

23 Q Okay. Who is Adam VanOpDorp?

24 A Adam VanOpDorp is a good friend of mine and a coworker
25 at Needham Excavating.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay. And who is Shannon Vickers?

2 A Shannon Vickers is an organizer for Local 150.

3 Q Okay. And so what was the discussion you had with Mr.
4 VanOpDorp?

5 A He came to me and, you know, explained to me that
6 things weren't going good and he was involved with this
7 organizing deal, and he wanted to take me along with him to
8 make a better life for me and my family. Like he pushed me
9 to go talk to Shannon Vickers, so I listened to him and
10 contacted Shannon, met up with him, and on April 12, 2019 I
11 signed a card supporting the Union.

12 Q Okay. All right. Don't get too far ahead of me. When
13 you had this conversation with Mr. Adam VanOpDorp, when did
14 that discussion initially take place?

15 A Oh, the end of February or the beginning of March 2019.

16 Q Okay. And when did you contact Shannon Vickers?

17 A It would have been the middle of March, the third week
18 in March or something like that.

19 Q Okay. And how did you contact him?

20 A I called him.

21 Q Okay. And what was the discussion that you had with
22 Mr. Vickers?

23 A I just asked him what I needed to do to become
24 involved, and then he explained everything to me.

25 Q Okay. So getting involved in the organizing effort?

1 A Yes.

2 Q And what did he explain to you?

3 A He just explained to me what was going on with Adam.

4 Q What did he tell you about Adam? I need specifics.

5 A He just told me Adam was involved with the organizing
6 effort, and he explained to me what I, you know, needed to
7 do help and stuff like that.

8 A Okay. Now in addition to I guess talking to Mr.
9 Vickers, did you talk to any other employees at Needham
10 Excavating, Inc. about organizing Needham Excavating, Inc.?

11 A Yes.

12 Q And when did you start doing?

13 A I started doing that when I was working with David
14 Carter at SSAB in Blue Grass, Iowa.

15 Q And when was that?

16 A I don't remember the exact dates.

17 Q Do you remember if that was February or March of 2019?

18 A I believe it started in March and the beginning of
19 April.

20 Q Okay. And how often would you talk to employees about
21 unionizing or organizing Needham Excavating, Inc.?

22 A With Dave Carter, I mean I initially said something to
23 him. I mean we were doing our jobs, so I wasn't -- I didn't
24 want to distract him. I mean I talked to him about at lunch
25 and stuff like that, but I was mostly concentrating on my

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 job.

2 Q Okay. Did you talk to him about organizing Needham
3 Excavating, Inc.?

4 A Oh, it was brought up I'd say every other day or maybe
5 every day sometimes depending on the situation. He was kind
6 of in the dumps at the time, and we were hanging out every
7 day for like two weeks.

8 Q Okay. So in addition to talking to you about
9 unionizing Needham Excavating, Inc., did Mr. Adam VanOpDorp
10 engage in any activities in furtherance?

11 A Yes.

12 Q What else did he do, if anything?

13 A He came out wearing a T-shirt, and it had a sticker on
14 the back of his pickup.

15 Q Okay. When did he start -- okay. So let me go back.
16 Describe the T-shirt.

17 A The T-shirt was lime green and it had International
18 Union of Operating Engineers on the left chest. Then it had
19 an American flag and an excavator on the back and had the
20 Local 150 on the back.

21 Q How often did he wear this T-shirt?

22 A Every day.

23 Q Okay. And then you mentioned this sticker. Where was
24 the sticker located?

25 A In the center window on the back of his pickup truck.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And what did the sticker say?

2 A It's the logo for Local 150, the pressure gauge.

3 Q Okay. And when did you first notice that sticker?

4 A April 11, 2019.

5 Q Okay. And where did you say that sticker was located?

6 That was on his vehicle?

7 A Yes, on the back window of his pickup.

8 Q Okay. Now directing your attention to May 29, 2019,

9 what, if anything, happened on that day?

10 A On May 29, 2019, I forgot my lunch pail, so I stopped

11 at Needham's old -- it's called the old FS building. I

12 grabbed my lunch pail and Joe was doing some site grading

13 there around the storm sewer.

14 Q Who is Joe?

15 A Joe Needham.

16 Q Okay. Go ahead.

17 A He came around the corner, which I didn't engage with

18 Joe very much. He did his own thing, and I didn't talk to

19 him much, but he approached me out of the blue and it was

20 kind of an awkward situation. It made me feel

21 uncomfortable. He goes I'll tell you what, I got 20 guys on

22 the payroll that 150 knows nothing about. He goes if I find

23 out who is feeding 150 information, they're done. I said

24 Joe, I don't know anything about that union stuff. I'm just

25 here to get my lunch pail. I got in the truck and I drive

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 off.

2 Q Do you remember what time of day this was?

3 A It was around noon because I stopped to get my lunch
4 pail.

5 Q Okay. Was anybody else present other than you and Joe
6 Needham?

7 A No.

8 Q Now initially when I stated to question you, I asked
9 you when was your last day of employment. When was your
10 last day of employment?

11 A June 10, 2019.

12 Q And can you recall what, if anything, happened on your
13 last day of employment, June 10, 2019?

14 A That morning about 6:30 I was at Y-48.

15 Q What is Y-48?

16 A Y-48 is like a drop yard for Needham where they keep
17 pipe and construction materials.

18 Q Okay.

19 A So at 6:30 in the morning, I had the lowboy there to
20 load pipe for a job I was going to. Curt was there to help.
21 Another awkward situation. It didn't feel right. Curt was
22 normally cordial, but this morning he was on edge it seemed
23 like. Rightfully so with everything going on. But he -- I
24 was loading a pipe or beginning to load a pipe or something
25 like that and under his breath he says cat's out of the bag,

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Dude. I know you've been talking to 150. I said whatever,
2 Curt. I kept doing what I was doing and then left.

3 Q Okay. And when you say Curt, again, who is Curt?

4 A Curt McKinley. I'm sorry.

5 Q That's okay. And was anybody else present other than
6 you and Curt McKinley?

7 A No.

8 Q Okay. All right. And did you have further discussion
9 with Curt?

10 A Yes. I received a text message at 1:30 saying I needed
11 to report to the office.

12 Q Who was the text from?

13 A The text was from Curt McKinley.

14 Q Okay. So at 3:30 when I got done with my day's work, I
15 went to the office. I walked into the office, Casie
16 Morehead, Needham's secretary, and Curt McKinley were in
17 Curt's office. I said what's up, Curt. And he turned
18 around, not much. He said so I talked to Joe and Nick and
19 with the lack of work coming up, we're going to have to lay
20 you off. I went really, with all the stuff that's going on
21 and as busy as we are, and he goes you don't know what we
22 have going on. I started naming off Forest Grove School,
23 Mark Twain, Garfield, and these other places, and he said
24 no, you don't understand. There's nothing going on. You
25 know, kind of heated, so I kind of shut it down, and I said

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 good enough and I walked out.
- 2 Q Okay. During this conversation it was just you and
- 3 Curt McKinley?
- 4 A Casie Morehead was present also.
- 5 Q Okay. And did you tape record this conversation?
- 6 A Yes.
- 7 Q And how did you record this conversation?
- 8 A With my cell phone.
- 9 Q Okay.
- 10 A In my pocket.
- 11 Q And you made reference to Forest Grove. What is Forest
- 12 Grove?
- 13 A Forest Grove school was a project that they had
- 14 started. They were moving dirt and hauling rock and stuff
- 15 like that and making entranceways.
- 16 Q What type of work were they supposed to do?
- 17 A They were doing site grading for the school.
- 18 Q Okay. When did that project start?
- 19 A That spring.
- 20 Q Do you know how long it was supposed to last?
- 21 A No.
- 22 Q Okay. What about Mark Twain? What is Mark Twain?
- 23 A Mark Twain is a school in Bettendorf.
- 24 Q Okay. And what type of work was Needham Excavating,
- 25 Inc. supposed to perform there?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A They were doing site grading and then putting some
2 storm sewer stuff in on the backside of the school and
3 digging on the inside of the school, putting in water mains
4 and stuff like that.

5 Q And so when did that job begin?

6 A I believe it began in the fall of 2018 and went into
7 2019.

8 MR. WILLIAMS: At this time, Your Honor, General
9 Counsel requests permission to share a screen to show
10 General Counsel Exhibit 9 with the help of Mr. Connolly.

11 JUDGE STECKLER: Question. Is there a transcript on
12 this?

13 MR. WILLIAMS: There is.

14 JUDGE STECKLER: Is that GC-10?

15 MR. WILLIAMS: Yes, it is, Your Honor.

16 **(General Counsel's Exhibit Nos. 9 and 10 marked for**
17 **identification.)**

18 JUDGE STECKLER: How long is tape?

19 MR. WILLIAMS: It's around two minutes.

20 JUDGE STECKLER: Okay. So people can follow along on
21 the transcript with the tape?

22 MR. WILLIAMS: Yes.

23 JUDGE STECKLER: Okay. Mr. Connolly, you may begin
24 GC-9.

25 *(Audio tape played)*

1 Q BY MR. WILLIAMS: Brett, during that conversation with
2 Curt McKinley and Casie Morehead you make reference to Adam
3 talking to -- or suggesting that he talked to Shannon. When
4 you mentioned Shannon, who were you referring to?

5 A Shannon Vickers, the organizer for Local 150.

6 Q Okay. Does this tape recording fairly and accurately
7 represent the conversation you had with Curt McKinley and
8 Casie Morehead about June 10, 2019?

9 A Yes.

10 MR. WILLIAMS: At this time, Your Honor, General
11 Counsel moves for the admission of GC Exhibit 9.

12 MR. WRIGHT: No objection, Your Honor, from
13 Respondent.

14 MR. WILLIAMS: And if you like, Your Honor, I can have
15 Mr. Connolly also share the screen to pull up GC-10, which
16 is the transcript.

17 JUDGE STECKLER: Yes.

18 MR. WILLIAMS: And offer that into evidence as well.

19 JUDGE STECKLER: That would be fine. Ms. LaRose, do
20 you have any objections on 9?

21 MS. LAROSE: No, Your Honor.

22 JUDGE STECKLER: GC-9 is admitted.

23 **(General Counsel's Exhibit No. 9 received into evidence.)**

24 Did everyone have an opportunity to review the
25 transcript as the tape was playing?

1 MR. WRIGHT: Yes, Your Honor. No objection from
2 Respondent.

3 JUDGE STECKLER: Ms. LaRose, any objection to GC-10?

4 MS. LAROSE: No, Your Honor.

5 JUDGE STECKLER: GC-10 is admitted.

6 **(General Counsel's Exhibit No. 10 received into evidence.)**

7 Q BY MR. WILLIAMS: So, Mr. Gripp, after you were laid
8 off on June 10, 2019, did you have any discussions with any
9 member of management of Needham Excavating, Inc. after that?

10 A Yes.

11 Q And when was that?

12 A June 14, 2019.

13 Q And what, if anything, happened on that day that you
14 can recall?

15 A I went into Needham Excavating's office to get my final
16 paycheck, and I walked into Nick Needham's office to get my
17 check. Normal conversation. I said what's up, Nick. Not
18 much. What's going on? And I said nothing. You know if we
19 get busy or if you get busier, make sure you call me back,
20 and he said will do, and I walked out.

21 Q Directing your attention to March 6, 2020, what, if
22 anything, happened on that day that you can recall?

23 A That morning I was working in the garage with my 19-
24 year-old son, Jarod.

25 Q Do you remember what time?

1 A About 9:30 in the morning.

2 Q Okay.

3 A And I sent Jarod to the auto parts store to get some
4 parts, and he came back about that same time. He said Dad
5 do you know that there's a Needham Excavating pickup out in
6 front of your house, and I'm like, no. So I walked down the
7 driveway toward the street. I got down pass the bushes
8 there at the edge of my house and I saw the Needham
9 Excavating pickup sitting there. So I walked out in the
10 street to confront the individual, and when I got to the
11 street, the vehicle took off to the north and turned left at
12 the stop sign and left. I didn't get to speak with them.

13 Q Okay. Can you describe the vehicle?

14 A It was a white Chevy pickup with Needham Excavating
15 stickers in the back window.

16 Q What color were the stickers?

17 A White.

18 Q All right. How large were the stickers?

19 A They're 8 to 10 inches. It's the Needham Excavating
20 logo.

21 Q Did you see the driver?

22 A No.

23 Q Now directing your attention to March 31, 2020. What,
24 if anything, happened on that day that you can recall?

25 A That morning I got called back to work at Barnhart.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 They started picking up work, so at 6:30 in the morning I
2 was walking out with my lunch pail and my belongings to get
3 in the company vehicle to go to work. When I got to the
4 street, I looked to the right and then I looked to the left
5 like a normal person would do to look for cars, and there
6 was a pickup sitting parked about a half a block to the
7 south. It was a similar type vehicle that I saw on March
8 6th. So I kind of -- you know, I rolled my eyes, paused a
9 little bit, and I'm like, well, whatever. I proceeded to
10 the pickup, and I got in the pickup, started it, let it warm
11 up a little bit, and the vehicle was still sitting behind
12 me. So I proceeded to the stop sign to head to work,
13 stopped, proceeded through to the north. The vehicle turned
14 its lights on and followed me up the street, stopped at the
15 same stop sign and then turned left to like leave to go back
16 doing whatever they were doing.

17 Q Okay. And what if anything else did you do?

18 A At 7:00 a.m. when I got to work and wasn't driving, I
19 called Shannon Vickers with the Local 150 to tell him what
20 went on.

21 Q And what was the discussion that you had with Mr.
22 Vickers?

23 A I explained to him what had happened, and he goes, huh,
24 kind of odd that the timing of this is right after the
25 decision by the Labor Board came out.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Do you remember him saying anything else during that
2 conversation?

3 A No.

4 Q Okay. Now can you describe the vehicle that you said
5 was behind you?

6 A It was a white pickup truck, a Chevy. It had lights on
7 top of the cab.

8 Q Okay. And could you see any Needham Excavating, Inc.
9 insignia on it at that time?

10 A No, because it was behind me facing me.

11 Q Okay. So since June 10, 2019, has anyone from Needham
12 Excavating, Inc. contacted you about returning to work for
13 Needham Excavating, Inc.?

14 A No.

15 MR. WILLIAMS: Your Honor, if I could have minute just
16 to make sure I don't have any additional questions.

17 JUDGE STECKLER: We'll go off the record for a minute.
18 *(Off the record)*

19 JUDGE STECKLER: On the record. Go ahead.

20 Q BY MR. WILLIAMS: Mr. Gripp, on the occasions that you
21 said you saw this white Chevy pickup, what city and state
22 were you in?

23 A Rock Island, Illinois.

24 Q Okay.

25 MR. WILLIAMS: I have no further questions, Your

1 Honor.

2 JUDGE STECKLER: Okay. Mr. Gripp, on this matter,
3 could you see a license plate at all?

4 THE WITNESS: No.

5 JUDGE STECKLER: You couldn't even tell what state it
6 was licensed in?

7 THE WITNESS: All their license plates says Scott
8 County, Iowa.

9 JUDGE STECKLER: Okay. But you couldn't see it, could
10 you?

11 THE WITNESS: It happened so fast, Your Honor, that I
12 walked out there, and I was concentrating on trying to talk
13 to the driver and see what they were doing there, so no, I
14 did not see it. I don't know the license plate number.

15 JUDGE STECKLER: Okay. The day the driver was
16 following you, on the 31st of March I believe -- yes, the
17 31st, could you make out any facial features in your rearview
18 mirror?

19 THE WITNESS: No. It was dark out.

20 JUDGE STECKLER: Ms. LaRose, your witness.

21 MS. LAROSE: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 Q BY MS. LAROSE: Mr. Gripp, are you -- did you ever
24 appear to testify at a Board hearing?

25 A Yes.

1 Q Do you remember when that was?

2 A July 2, 2019.

3 Q And was that in connection with this matter with
4 Needham?

5 A Yes.

6 Q Who else appeared to testify that day, if anyone else?

7 A Adam VanOpDorp, myself, Spencer Werthmann, Amber
8 Nielsen, and Brandon McKay.

9 Q Did anyone else appear?

10 A Yes.

11 Q Who was that?

12 A Elizabeth LaRose, Shannon Vickers, Patrick Carlson,
13 Ryan Drew, Joe Needham was there with his lawyer Stanley
14 Niew, Grant with the Labor Board, and the court reporter
15 were in there as well.

16 Q Turning to your employment with Needham, you had
17 performed some truck driving work for the company. Did I
18 get that from your direct?

19 A Yes.

20 Q And were there other people driving trucks for the
21 company when you were employed there?

22 A Yes.

23 Q Who were those people?

24 A Clint McKinley, Brandon McKay, Rick Needham, Jimmy
25 Jones, Curt Stange, myself, and Amber Nielsen, and then when

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 I started there, Rod Bailey was there as well.

2 Q Do you need a commercial driver's license to be a truck
3 driver?

4 A Yes.

5 Q And why is that?

6 A Because it's a requirement by law.

7 Q And did you yourself have a CDL?

8 A Yes.

9 Q What kind of CDL did you have?

10 A A CDL Class A with hazmat and tanker endorsements.

11 Q Is that what CDL Class A means, the tanker and hazmat
12 endorsements or are those separate from the A designation,
13 if you know?

14 A The hazmat and tanker endorsements are for hauling
15 petroleum and gas products. The Class A is to drive a semi
16 over 16,000 pounds combination vehicle.

17 Q Okay. Did other people at Needham have a CDL?

18 A Yes.

19 Q Who else that you know?

20 A Clint McKinley, Amber Nielsen, Curt Stange, Jimmy
21 Jones, Rick Needham, and Brandon McKay.

22 Q And did anybody else have a Class A?

23 A Yes.

24 Q Who were those people?

25 A Jimmy Jones, Brandon McKay, Clint McKinley, and myself.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And who supervised the truck drivers?

2 A Curt McKinley.

3 Q What kind of trucks did Needham have at the time you
4 were working there?

5 A They had dump trucks and semi combinations.

6 Q And how many of each?

7 A There were four tandem dump trucks and three semis.

8 Q And how many attachments for the semis?

9 A Clint McKinley just basically stayed with the lowboy,
10 but the Kenworth and the Peterbilt -- the Kenworth pulled
11 the lowboy or a tub, and the Peterbilt basically stayed
12 connected to the tub.

13 Q And when you say tub, what do you mean by that?

14 A A tub is basically a short dump truck used for hauling
15 concrete when you're tearing out or tree roots and stuff
16 like that to haul to the landfill. Sometimes we use it to
17 haul rock and lime screenings and such.

18 Q Okay. And what is a lowboy used for?

19 A To haul heavy machinery.

20 JUDGE STECKLER: Mr. Gripp, to get a Class A, what do
21 you have to do?

22 THE WITNESS: To get a Class A you have to go -- for
23 instance, in Illinois you have to go to the DMV, and you
24 have to take a written test and pass those first. And then
25 you have to take a driving test with a qualified individual

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 from the Department of Motor Vehicles, and you have to pass
2 it with flying colors in order to receive it.

3 JUDGE STECKLER: Thank you.

4 Q BY MS. LAROSE: And what kind of trucks did you drive
5 when you were in Needham's employment?

6 A I drove all of the previously stated vehicles.

7 Q And why -- I'm sorry. I think you said -- I think you
8 mentioned what Clint McKinley generally drove. Was there a
9 truck that Jimmy Jones generally drove?

10 A He normally drove the same trim work dump truck and he
11 usually liked to drive the Peterbilt semi with the tub.
12 That was his preference, so he was the senior driver and we
13 just let him drive what he wanted to.

14 Q Okay. And how about Brandon McKay?

15 A Brandon McKay drove the semi lowboy on occasion, and
16 sometimes the Ford dump truck just if somebody was sick or
17 wasn't at work just to fill in.

18 Q And Curt McKinley?

19 A I'm sorry?

20 Q Did you list Curt as one of the drivers?

21 A No, Clint, his brother Clint.

22 Q Yeah. Okay. I have Clint. I'm sorry about that.

23 A Right.

24 Q Rick Needham, what did he usually drive?

25 A He drove a tandem dump truck.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And what is the -- I'm sorry. What does Needham use
2 the tandem trucks for?

3 A To haul spoils, which are -- you know, when you're
4 doing site work. Spoils are what you haul out. And then we
5 haul materials like rock and lime screenings and dirt and
6 stuff like that.

7 Q What time do the truck drivers generally report for
8 work?

9 A We usually showed up about 6:30 or a quarter to 7:00
10 depending on how busy we were. Sometimes it was earlier
11 than that.

12 Q And where do the truck drivers report for work?

13 A The truck drivers reported to Needham's old shop. The
14 tandem truck drivers reported to the old FS building.

15 Q Can you just give us a general idea of how far away the
16 FS building is from Needham's offices in Walcott?

17 A About three or four blocks.

18 Q And how about the old shop?

19 A It's about a mile or maybe two miles away.

20 Q Do you know what FS stands for?

21 A Farm Service.

22 JUDGE STECKLER: Mr. Gripp, who works at that
23 building, the FS building?

24 THE WITNESS: Needham owns the old FS building. So the
25 tandem truck drivers are working there, and there's a wash

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 bay in there, so everybody uses the wash machinery and
2 trucks. Sometimes we did other stuff in there like building
3 stuff. For like cubby park, we built benches and stuff in
4 there. It's like a general workshop. And some construction
5 materials are stored in there as well.

6 JUDGE STECKLER: Where did you take your truck if you
7 needed repairs or maintenance?

8 THE WITNESS: To K & K Repair, which Needham owns.

9 JUDGE STECKLER: How do you know that Needham owns K &
10 K?

11 THE WITNESS: I mean we all know that Joe Needham owns
12 it.

13 JUDGE STECKLER: Ms. LaRose, you may continue.

14 Q BY MS. LAROSE: After the truck drivers report for
15 work at either the FS building or the old shop, how do they
16 know where to go from there?

17 A We are directed via ScheduleBase or text message from
18 Curt McKinley.

19 Q And what is ScheduleBase?

20 A ScheduleBase is an app for your phone that companies
21 use so the employees can see what they're doing on a day-to-
22 day basis and where they're going and what their job
23 responsibilities are.

24 Q Okay. I'm going to show you a document that has been
25 marked as Union's Exhibit No. 4. Do you see that document

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 up on your screen, Mr. Gripp?

2 A Yes.

3 Q Could you please tell us if you recognize that
4 document?

5 A Yes, I do.

6 Q What is it?

7 A It's a screen shot off of my cell phone on Friday,
8 April 12, 2019 of ScheduleBase, and then it has all the
9 truck drivers listed.

10 **(Union's Exhibit No. 4 marked for identification.)**

11 Q All right. You took this screen cap, if I'm
12 understanding you correctly, the same day as the date that
13 in the exhibit, Friday, April 12, 2019?

14 A Yes.

15 Q Okay.

16 MS. LAROSE: Your Honor, I'm going to move for Union's
17 Exhibit 4.

18 MR. WRIGHT: No objection from Respondent.

19 JUDGE STECKLER: General Counsel is muted.

20 MR. WILLIAMS: No objection, Your Honor.

21 JUDGE STECKLER: Union's 4 is admitted.

22 **(Union's Exhibit No. 4 received into evidence.)**

23 MS. LAROSE: Thank you, Your Honor.

24 Q BY MS. LAROSE: Now, Mr. Gripp, let's go back to
25 Union's 4, please. I see at the top it says truck drivers.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yes.

2 Q Were you able to see other groups of employees in this
3 same software?

4 A Yes.

5 Q Okay. Do you remember how you would do that, how you
6 would see those other employees?

7 A Just hit the back button that you see at the top of the
8 screen, and it would take you to the previous screen, and
9 then you could pick laborers, operators, or all, there's an
10 all choice you could pick, and they would all be listed on
11 the page.

12 Q And at some point, did what you were able to see in
13 ScheduleBase change?

14 A Yes.

15 Q And how was that? How did it change?

16 A There was a point, and I believe it was April 19, 2019,
17 where I opened up ScheduleBase and I could no longer see
18 anybody else. The only person I could see was myself and
19 what I was doing.

20 Q Mr. Gripp, I'm going to show you a document that I have
21 marked as Union's Exhibit 22. Could you please take a look
22 at that and tell me if you recognize it?

23 A Yes, I recognize it. It's a screen shot of my phone,
24 April 19, 2019.

25 Q And is this an example of what you just testified about

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 which is you only being able to see yourself in
2 ScheduleBase?

3 A Yes.

4 **(Union's Exhibit No. 22 marked for identification.)**

5 Q And was this the first time that you found that you
6 were limited in ScheduleBase to see only your own
7 activities?

8 A Yes.

9 Q Okay.

10 MS. LAROSE: Your Honor, I'm going to move for
11 admission of Union's Exhibit 22.

12 MR. WILLIAMS: No objection, Your Honor.

13 MR. WRIGHT: No objection.

14 JUDGE STECKLER: Union 22 is received.

15 **(Union's Exhibit No. 22 received into evidence.)**

16 MS. LAROSE: Thank you, Your Honor.

17 Q BY MS. LAROSE: Your destination in the truck was a
18 material producer. What did you do there?

19 A As a material producer we would go to a rock quarry or
20 a sand pit to pick up material for a job.

21 Q And when you got there, who loaded the material onto
22 the truck?

23 A Usually an operator at the rock quarry.

24 Q How long does it take for the material to get loaded on
25 average?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Between 15 and 30 minutes depending on how busy the
2 rock quarry is.

3 Q And what are some of the material producers who
4 supplied material to Needham jobs?

5 A Allied Stone, the quarry of McCausland, the quarry in
6 Le Clair, and we went to the sand pit quite a bit down on
7 River Drive in Davenport. The Cleveland Quarry was another
8 one we used frequently.

9 Q Once you've picked up material, where is it that the
10 truck driver generally takes it?

11 A Usually to a job site where Needham is performing a
12 job.

13 Q And what kind of material -- can you give us some
14 examples of material that Needham was conveying from the
15 material producers to its job sites?

16 A Some examples are 1" clean is used quite a bit, 2"
17 clean. It's 1 1/2" down, which is like a
18 base gravel. Lime screenings and sand. Rip rap, which is
19 like 4" to 6" rock. Those are some examples.

20 Q Sand I think you mentioned earlier.

21 A Sand, yes.

22 Q What is sand used for on these construction projects?

23 A Sand is used a lot for backfill or a base underneath
24 concrete and such.

25 Q And I think you said 1" down. What is that usually

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 used for?

2 A So 1" down has lime screenings in it. It's like you
3 put 2" clean down and then you put the 1-1/2" down over the
4 top to like make it solid in order to -- like entranceways
5 to job sites so you can drive on it. It's more solid for
6 the trucks to get in and out.

7 Q Thank you. And how much time the truck drivers usually
8 spend at job sites during the day?

9 A Oh, I'd say 30 to 40 percent of the time. Most of the
10 time is spent driving to and from the rock quarries or the
11 material producers.

12 Q And how many trips to and from the material producers
13 or job sites might a truck driver make in a given day?

14 A Oh, it varied, but usually 10 to 12 trips because most
15 of the job sites were pretty close to the quarries we were
16 getting the material at.

17 Q When the truck drivers are, you know, operating the
18 trucks, do they have other people with them in the cab?

19 A No.

20 Q So how -- when it's needed, how do the truck drivers
21 communicate with other truck drivers?

22 A Usually with a CD or hand signals. I mean when we're
23 stopped, then sometimes we would call each other on our cell
24 phones.

25 Q Okay. And how do you communicate with the -- or how

1 did you communicate with the office?

2 A With my cell phone.

3 Q Did operators have CB radios?

4 A No.

5 Q And what time did you typically leave work for the day?

6 A Usually between 3:30 and 6 o'clock, but if we were busy
7 the sometimes it was later.

8 Q Did you ever run -- I think you said that you ran heavy
9 equipment.

10 A Yes.

11 Q Can you give us some examples of heavy equipment that
12 you ran?

13 A I ran a 330 John Deere, a 350 Case excavator, a 135
14 excavator, 770 bobcat, Bomag sheepsfoot, 310 combo hoe, a
15 644 John Deere end loader pushing snow.

16 Q And how often did you run heavy equipment?

17 A Oh, it was a couple -- two or three times a week
18 usually.

19 Q Including the spring and summer of 2019?

20 A Yes.

21 Q And in the winter as well?

22 A Yes.

23 Q Why would you be operating heavy equipment in the
24 wintertime?

25 A I was pushing snow with the 644 John Deere end loader.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Did other truck drivers run equipment?

2 A Clint McKinley did, yes. And Brandon McKay, he's
3 classified as a truck driver as well. He did, you know, he
4 operated machinery.

5 Q Was there also -- so you had discussed earlier how if
6 you, you know, pushed the right buttons on ScheduleBase you
7 could see lists of other employees.

8 A Yes.

9 Q I'm going to show you a document that we have marked as
10 Union's Exhibit 13. Could you please take a look at that
11 document?

12 A Yes.

13 Q Do you recognize this?

14 A Yes, it's a screen shot of my cell phone of
15 ScheduleBase.

16 Q And what are we seeing specifically from ScheduleBase
17 in this exhibit?

18 A It's a list of operators for Needham Excavating on
19 Friday, April 12, 2019.

20 **(Union's Exhibit No. 13 marked for identification.)**

21 Q Thank you.

22 MS. LAROSE: Your Honor, I'm going to move for
23 admission of Union 13.

24 MR. WILLIAMS: No objection, Your Honor.

25 MR. WRIGHT: No objection.

1 JUDGE STECKLER: Union's 13 is admitted.

2 **(Union's Exhibit No. 13 received into evidence.)**

3 Q BY MS. LAROSE: And now I'd like to put up on the
4 screen Union's 12. Would you please take a look at that,
5 Mr. Gripp?

6 **(Union's Exhibit No. 12 marked for identification.)**

7 A This is a screen shot as well.

8 Q Who took this screen shot?

9 A I did.

10 Q Okay. And what are we seeing in this screen shot?

11 A The screen shot is of Needham Excavating. It's the all
12 category, which if you wanted to see the next page you would
13 have to scroll up on your phone. It has operators, truck
14 drivers, and laborers all listed on it.

15 Q Can you go to page two, please? We're putting up page
16 2, Mr. Gripp, of this same exhibit. Does this demonstrate
17 what you're going to see when you scroll down just as you
18 described?

19 A Yes.

20 MS. LAROSE: Your Honor, I'm going to move for
21 admission of Union Exhibit 12.

22 MR. WRIGHT: No objection, Your Honor.

23 MR. WILLIAMS: No objection, Your Honor.

24 JUDGE STECKLER: Union 12 is admitted.

25 **(Union's Exhibit No. 12 received into evidence.)**

1 MS. LAROSE: Thank you, Your Honor.

2 Q BY MS. LAROSE: You mentioned earlier in your
3 testimony an employer called K & K. What is K & K?

4 A K & K is an equipment repair shop.

5 Q And did K & K service only Needham equipment at that
6 shop?

7 A No.

8 Q K & K had other customers?

9 A Yes.

10 Q Who worked there and what were their positions?

11 A Bill Bouchard was a mechanic. Jered Nielsen was a
12 mechanic. Spencer Werthmann worked in the shop as well, and
13 then Amber Nielsen at the end of my employment was the shop
14 foreman.

15 Q And when -- did you have trucks that while you were
16 employed there required repairs from time to time?

17 A Yes. General services and if we had a breakdown, yes,
18 they'd be in the shop to get fixed.

19 Q And when you say the shop, you're talking about K & K?

20 A Yes, sorry.

21 Q That's all right. And was Jered's name ever in
22 ScheduleBase?

23 A No.

24 Q How about Bill Bouchard?

25 A No.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 Q Amber Nielsen?
- 2 A No, not that I recall.
- 3 Q How about Spencer Werthmann?
- 4 A Spencer was toward the end, yes.
- 5 Q Did mechanics regularly work on job sites?
- 6 A I wouldn't say regularly, no.
- 7 Q Where did they regularly work?
- 8 A In the shop at K & K.
- 9 Q And how often did you see the mechanics doing field
10 mechanic work?
- 11 A Oh, whenever there was a need for service on a machine
12 that wasn't able to be transported back to the shop or if
13 there was a breakdown then you'd see them show up with a
14 service truck.
- 15 Q I asked how often.
- 16 A Oh, I'm sorry.
- 17 Q That's all right.
- 18 A Maybe once or twice a week.
- 19 Q Okay. Thank you. Did you ever see the mechanics run
20 heavy equipment for the purpose of building construction?
- 21 A No.
- 22 Q In the last six months prior to your termination, did
23 you ever see Amber from the shop drive a truck?
- 24 A No.
- 25 Q Did you ever see her operate equipment?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A No.

2 Q Did you ever see Nick Needham operating equipment?

3 A No.

4 MS. LAROSE: Those are all of my questions for this
5 witness, Your Honor.

6 JUDGE STECKLER: Okay. Mr. Gripp --

7 MR. WILLIAMS: Your Honor.

8 JUDGE STECKLER: Go ahead, Mr. Williams.

9 MR. WILLIAMS: Yeah, I was just going to ask one or
10 two questions that are short, but go ahead, Your Honor.

11 JUDGE STECKLER: Okay.

12 EXAMINATION BY COURT

13 JUDGE STECKLER: Mr. Gripp, while you were employed at
14 Needham, what kinds of complaints did you receive about your
15 work, if any?

16 THE WITNESS: Excuse me? It's hard to hear you, Your
17 Honor.

18 JUDGE STECKLER: Okay. I'm sorry. Can you hear
19 better now?

20 THE WITNESS: Yes.

21 JUDGE STECKLER: What complaints, if any, were given
22 to you about your work while you were at Needham?

23 THE WITNESS: I never received any complaints.

24 JUDGE STECKLER: What about running your mouth? Did
25 you ever get any complaints about that?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: No. I was just a happy, go-lucky guy, I
2 guess.

3 JUDGE STECKLER: Were there any occasions where you
4 had problems starting any of the equipment that you worked
5 with?

6 THE WITNESS: Yes.

7 JUDGE STECKLER: What kinds of situations were those
8 and be as specific as possible.

9 THE WITNESS: There was an instance at Portillos where
10 they have an old, a really old Bomag roller, it's a
11 sheepsfoot, and I had never started it before. I simply
12 called my friend Adam to ask him how to start it. He told
13 me, and I started it up, and then I used it that day.

14 JUDGE STECKLER: Okay. Any other problems operating
15 equipment?

16 THE WITNESS: There were a couple of instances with
17 the old lowboy. I mean it was hard to hookup sometimes.
18 Dan Needham helped me one day hook it up because I was
19 having problems. Then another day Curt McKinley helped me
20 hook it up because sometimes when you've got a heavy piece
21 of equipment on there it was hard to get it hooked back up
22 just because of the age of the equipment.

23 JUDGE STECKLER: Okay. To your knowledge, did any
24 other drivers have problems with that piece of equipment?

25 THE WITNESS: Yes.

1 JUDGE STECKLER: And who was that?

2 THE WITNESS: Clint McKinley. I had to help him a
3 couple of times hook it up.

4 JUDGE STECKLER: Okay. The piece of equipment you
5 mentioned at Portillos, did anyone else have problems
6 getting it started?

7 THE WITNESS: Yes, because the lever has to be in a
8 certain position in order to start it. It's kind of tricky.

9 JUDGE STECKLER: So who else had those problems?

10 THE WITNESS: I saw Ian Macumber one day have a little
11 bit of a problem, and Adam VanOpDorp had to help him get it
12 running.

13 JUDGE STECKLER: Okay. Thank you. Is Respondent --
14 excuse me. Mr. Williams, you had a couple of questions.

15 FURTHER DIRECT EXAMINATION

16 Q BY MR. WILLIAMS: While you were employed at Needham
17 Excavating, Inc., could employees talk about sports during
18 working time?

19 A Yes.

20 Q Could they talk about hunting during working time?

21 A Yes.

22 Q Could they talk about motorcycles during working time?

23 A Yes.

24 Q So they could talk about non-work-related issues during
25 working time?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yes.

2 Q Okay.

3 MR. WILLIAMS: No further questions, Your Honor.

4 EXAMINATION BY COURT

5 JUDGE STECKLER: What, if anything else, do you
6 recall, Mr. Gripp, about topics that were discussed during
7 working time?

8 THE WITNESS: We talked -- I mean it's just a general
9 -- what construction guys talk about. Everyday stuff. I
10 mean --

11 JUDGE STECKLER: Were you on your CB or on your cell
12 or how did you communicate?

13 THE WITNESS: If we're at the job site, we would just
14 be talking amongst each other. I mean us truck drivers, you
15 know, we talk on the CB joking around and stuff when we're
16 driving back and forth following each other. I mean we're
17 truck drivers, and that's what we do. We joke around.

18 JUDGE STECKLER: Okay. Was that hands-free also?

19 THE WITNESS: The CB is not hands-free, no.

20 JUDGE STECKLER: Okay. So any truck driver who wanted
21 to use a CB would have to use it with their hands, correct?

22 THE WITNESS: You have to reach up and grab the mike
23 and key the mike with your hand, yes.

24 JUDGE STECKLER: Thank you. Any further questions,
25 Mr. Williams?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WILLIAMS: No, Your Honor.

2 JUDGE STECKLER: Ms. LaRose?

3 MS. LAROSE: No, Your Honor.

4 JUDGE STECKLER: Respondent, any questions?

5 MR. WRIGHT: Thank you, Judge.

6 Mr. Gripp, before getting started, do you recall, did
7 you sign any affidavits in connection with any unfair labor
8 practice charge against the company? Do you recall?

9 THE WITNESS: Yes.

10 MR. WRIGHT: How many?

11 THE WITNESS: Two.

12 MR. WRIGHT: Your Honor, at this time we would request
13 that General Counsel provide those to us so that we could
14 review before cross-examination briefly.

15 MR. WILLIAMS: Your Honor, I have protective order that
16 I would like to send to Respondent before providing those
17 affidavits. I can send a copy to you as well.

18 JUDGE STECKLER: Okay. Unless you want to enter it as
19 an exhibit, I don't need to see it.

20 MR. WILLIAMS: I need for them to agree to it and sign
21 it.

22 JUDGE STECKLER: Yeah. Let's go off the record so
23 that Respondent will have an opportunity to review and sign
24 and get back to you. And just for clarification purposes,
25 Mr. Williams, how many pages in the affidavits?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WILLIAMS: I'd have to look. There are two. I
2 would have to go back and look, Your Honor, but it's two
3 affidavits, but I can't tell you right now off the top of my
4 head how many pages per affidavit right now.

5 JUDGE STECKLER: Okay. Let's take about 10 minutes
6 off the record so the Respondent can take a look at this and
7 get it back to the GC. And if Respondent doesn't want to
8 sign or can't get it signed right away, we will then get
9 back on the record and admit this as an exhibit and have
10 Respondent verbally agree. Off the record.

11 (Off the record)

12 JUDGE STECKLER: We are on the record. During the
13 break, the parties looked at the protective order provided
14 by General Counsel. The General Counsel now has copies
15 signed from Respondent and the Union. So at this point, Mr.
16 Williams, it's time to provide the affidavits, correct?

17 MR. WILLIAMS: Yes. Yes, it is. Okay, General
18 Counsel just emailed to Ms. LaRose, Mr. Niew, and Mr. Wright
19 two affidavits provided by Mr. Brett Gripp regarding this
20 matter.

21 The first affidavit was dated December 3, 2019 and
22 consists of three pages along with another affidavit dated
23 July 1, 2020, which consists of three pages.

24 JUDGE STECKLER: Okay. Approximately how much time do
25 you need, Mr. Wright?

1 MR. WRIGHT: Your Honor, if we could have 10 minutes.

2 JUDGE STECKLER: Okay. We'll be off the record for 10
3 minutes. We'll come back at 10:13 central time. Thank you.

4 (Off the record)

5 JUDGE STECKLER: Back on the record. Mr. Wright, your
6 witness.

7 CROSS-EXAMINATION

8 Q BY MR. WRIGHT: Mr. Gripp, did you receive a subpoena
9 from the company or its attorney in advance of this hearing?

10 A Yes.

11 Q Did you have a chance to review it?

12 A Yes.

13 Q Did you have any responsive documents to the subpoena?

14 A No.

15 Q All right. Mr. Gripp, I'm going to start by going back
16 to this May 29, 2019 conversation that you testified. You
17 said you spoke with Joe Needham. Do you recall that
18 testimony?

19 A Yes.

20 Q You said that took place at the old FS building?

21 A Yes.

22 Q And that he came around the corner of the building and
23 said something to the effect of I'll tell you what, I've got
24 20 guys on payroll that 150 doesn't know about, and if they
25 think they're getting back in here, they're nuts. Is that

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 correct?

2 A Yes.

3 Q And if I pointed out who is giving them information,
4 they're done?

5 A Yes.

6 Q And there wasn't anyone else present for this
7 conversation?

8 A No.

9 Q No one else within ear shot?

10 A No.

11 Q Did you talk to anybody else about this conversation
12 right after you had it allegedly with Mr. Needham?

13 A No.

14 Q Okay. I want to move to your June 10th termination or
15 layoff terminate date. You testified about that, correct?

16 A Yes.

17 Q You said you started the morning at one of the drop
18 yards and Curt McKinley was helping you load pipe. Is that
19 correct?

20 A Yes.

21 Q And that during -- while the two of you were there
22 loading pipe, he said to you under his breath that the cat
23 is out of the bag, dude, we know you've been talking to the
24 Local 150.

25 A Yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay. But no one else was around for this conversation
2 either?

3 A No.

4 Q Did you respond to Curt when he said that?

5 A I said whatever, dude, then I kept up with what I was
6 doing.

7 Q And that's all you said to him?

8 A Yes.

9 Q Did he say anything further?

10 A No, he go in his pickup and he left.

11 Q Okay. And then you got a text message from Curt later
12 that afternoon asking you to come into the company's office,
13 correct?

14 A Yes.

15 Q Okay. And --

16 MR. WRIGHT: Your Honor, I'll request the ability to
17 share a screen now.

18 JUDGE STECKLER: Okay. Go ahead.

19 Q BY MR. WRIGHT: Mr. Gripp, I'm going to show you
20 what's been admitted into evidence as GC Exhibit 10. Can
21 you see my screen right now?

22 A Yes.

23 Q This is a transcript of the recording of that meeting
24 you had about the layoff notification from Curt McKinley,
25 correct?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yes.

2 Q Okay. I want to go through this with you because at no
3 point during this conversation where Curt tells you that
4 you're being laid off did you ever mention anything about
5 this alleged remark he had made that morning about we know
6 you're talking to the 150, do you?

7 A No.

8 Q Is there any particular reason why didn't reference it
9 at all?

10 A Not that I recall, no.

11 Q Okay. Right here at time stamp 49 seconds, Curt says I
12 have no idea what you're doing with that, and it has nothing
13 to do with it. You didn't say in response this morning you
14 said you know I'm talking to the 150, did you?

15 A No.

16 Q Okay. Down at time stamp marked a minute 20, Curt says
17 you can believe what you want, that's just how it is, man.
18 There ain't nothing I can do about it. I don't have nothing
19 going. I don't know what you've got going with Adam or what
20 you've got with them. And you say I don't have nothing
21 going with them, correct?

22 A Yes.

23 Q You don't tell Curt in response to him saying I don't
24 know what you've got going on, you don't say anything about
25 this alleged remark he said earlier that morning, correct?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Correct.

2 Q At 2:07, Curt says it has nothing to do with that
3 referring to you talking to Adam. Again, you don't say
4 anything about this morning Curt, you said you know I'm
5 talking to the 150, and you don't say anything about that,
6 right?

7 A Nope.

8 Q Okay. Mr. Gripp, I just want to go back and confirm
9 that I have this correct as to the March 6, 2020 claim that
10 there was a Needham truck outside your house. Do you recall
11 your testimony on that?

12 A Yes.

13 Q I just want to confirm you did not see who was driving?

14 A No.

15 Q You said it was a white Chevy pickup. Are there any
16 employees to your knowledge that are assigned a white Chevy
17 pickup as part of their employment with the company?

18 A Yes.

19 Q Who?

20 A Ian Macumber.

21 Q Okay.

22 A Curt McKinley has a white pickup as well.

23 Q Okay. Anyone else?

24 A Joe Needham has a white pickup.

25 Q Okay.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A And then there's a -- Clint McKinley frequently drove
2 the white F-350 Ford.

3 Q Is that what this was though?

4 A No, it was a Chevy.

5 Q Okay. Do you know if Joe Needham's truck was a Chevy?

6 A No, he has a Toyota.

7 Q Okay. What about trucks you referenced with Curt
8 McKinley and Ian Macumber?

9 A Curt McKinley and Ian Macumber both drive Chevy pickups
10 with Needham stickers in the back window.

11 Q But you couldn't tell when you walked out of your house
12 on the morning of the 6th whether the general description or
13 size of the individual fit either the description of Ian or
14 Curt?

15 A No.

16 Q On the 6th, I mean what were the weather conditions that
17 day if you -- I mean was it foggy?

18 A No.

19 Q Okay. What were the weather conditions that morning?

20 A It was a nice spring day.

21 Q Okay. How far away was the truck when you approached
22 it?

23 A I'd say about 30 yards by the time the person saw me
24 and took off.

25 Q How far down the street was the truck parked?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A It was right in front of my house, right on the street.

2 Q Okay. Did you take -- do you have any photos or
3 anything like that?

4 A No, I didn't have time to take a picture.

5 Q Okay. Then on the 31st you say a similar looking truck
6 was parked half a block to the south, correct?

7 A Yes.

8 Q And did you approach the truck?

9 A No.

10 Q Is there any particular reason why didn't just walk up
11 to see who was in the truck if you thought it was a Needham
12 truck?

13 A No, no.

14 Q Okay. Instead you got in your own truck and went to
15 your work, your own place of employment, correct?

16 A Correct.

17 Q Did that truck on the 31st have stickers in the window?

18 A I couldn't see them. It was facing me.

19 Q Okay. And you said you called Shannon after this
20 happened, correct?

21 A Yes.

22 Q You didn't call him before you got in your truck and
23 took off, right?

24 A No.

25 Q Okay. So you didn't really do any kind of

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 investigation to see who was in the truck that morning,
2 correct?

3 A No.

4 Q I'm going to have you look at Union Exhibit 22. This
5 was -- you testified about this. This was when you said in
6 ScheduleBase as of April 19th you could only see your
7 schedule and not those of your coworkers, correct?

8 A Correct.

9 Q Do you know whether or not as of this date, April 19,
10 2019, if everyone could only see their own schedules?

11 A The only two people who could only see our own stuff
12 were me and Adam.

13 Q Did you check with others?

14 A No.

15 Q So the only person you talked to about it was Adam?

16 A Right.

17 Q So you don't know if Dave Carter or Clint McKinley or
18 any of the other guys whether or not they could see everyone
19 or just themselves, correct?

20 A Correct.

21 Q You testified earlier during the Union's counsel's
22 examination that you drove -- you ran heavy equipment two or
23 three times per week usually. Do you recall that testimony?

24 A Yes.

25 Q Would you be surprised if your timecards showed that

1 you only operated equipment on two occasions and for a total
2 of 8-1/2 hours?

3 A Yes, I'd be surprised at that.

4 Q Okay. Why is that?

5 A Because I have proof in my notes and pictures and
6 videos that I ran machinery more than that.

7 Q Did you ever record that in the timecards?

8 A There were a couple of occasions, yes.

9 Q So maybe only a couple of occasions that you actually
10 recorded it in your timecard?

11 A Yes.

12 Q Why would that be?

13 A Because there was a lot of times that you would just
14 operate a piece of machinery on the job and not really have
15 to record it.

16 Q To your knowledge, was that true of other employees as
17 well?

18 A Yes.

19 MR. WRIGHT: Your Honor, at this stage I'd request to
20 go a little bit beyond the scope here and hopefully dispense
21 of the need to call this witness in the company's case-in-
22 chief.

23 JUDGE STECKLER: Well, you subpoenaed him, so go
24 ahead.

25 MR. WRIGHT: Hang on, Your Honor. One moment. I need

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 to confirm --

2 MS. LAROSE: May I ask a question? Was this witness
3 subpoenaed for testimony?

4 MR. WRIGHT: Yes. Your Honor, I'm sorry. I missed
5 whether or not you granted the request to go beyond the
6 scope here.

7 JUDGE STECKLER: Yes, I did.

8 MR. WRIGHT: Okay. Thank you.

9 Q BY MR. WRIGHT: Mr. Gripp, your wife previously worked
10 with Joe Needham's wife. Is that correct?

11 A Yes.

12 Q What was the work relationship there?

13 A They were coworkers.

14 Q Where at?

15 A Genesis East in Davenport, Iowa.

16 Q For how long?

17 A Approximately 10 to 12 years until Julie retired.

18 Q Okay. And you guys also -- were you friends?

19 A Yes.

20 Q And you shared mutual friends, correct?

21 A Yes.

22 Q You also testified on your direct examination earlier
23 that you were friends with Adam VanOpDorp, correct?

24 A Yes.

25 Q And you and Adam have been friends for a long time,

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 right?

2 A Yes.

3 Q How long?

4 A Well, I've known Adam since he was a little kid. We
5 grew up in the same vicinity in Atkinson and Annawan.

6 Q Okay. How did you come to meet Adam?

7 A I mean just by growing in the same neighborhood. We
8 raced motorcycles together when we were kids. Just hunting
9 and fishing and hanging out and drinking beer and stuff like
10 that.

11 Q Okay. And you guys hung out socially quite a bit,
12 correct?

13 A Yes.

14 Q Okay. Do you know Jeff Dunleavey?

15 A Yes.

16 Q And he's a former Needham employee, correct?

17 A Yes.

18 Q And he basically referred you to the company for your
19 employment. Is that right?

20 A Adam and Jeff, yes.

21 Q Okay. Was Jeff your supervisor for a period of time,
22 for a stretch there?

23 A Yes.

24 Q Do you know when -- how long was he your supervisor?
25 Can you give us a time estimate?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A I started in October of 2018, and then I believe
2 Dunleavey left early spring 2019 or something like that. I
3 don't know the exact timeline.

4 Q Was he your supervisor from the time you were hired up
5 until the time Jeff left?

6 A Yes.

7 Q Okay. And you would agree that the company's
8 management consisted of Nick Needham, Dan Needham, Curt
9 McKinley, and Joe Needham. Is that fair?

10 A Yes.

11 Q And when you were hired by the company or shortly
12 thereafter, you told management that you could run any
13 machine the company owned and could do anything assigned to
14 you, correct?

15 A Yes.

16 Q But that didn't turn out to be true, did it?

17 A There was an instance where I had trouble starting a
18 couple of machines.

19 Q Okay. Just a couple of instances?

20 A Yes.

21 Q Okay. One of those you might have mentioned on your
22 direct was the one Curt had to help you start the Bomag 213
23 roller.

24 A He didn't help me start the Bomag roller.

25 Q Okay. So you deny that Curt ever helped you start that

1 machine?

2 A Yes, he didn't help me, Adam did.

3 Q Okay. Was there also an instance in June of 2019 where
4 Curt had to help you load pipe on a lowboy?

5 A Yes.

6 Q Did someone else have to help you unload it when you
7 got to the job?

8 A Yes.

9 Q Who was that?

10 A I don't remember the person, but normally you would
11 show up at the lowboy like that and then they would unload
12 it for you with a machine.

13 Q Are you aware of whether Curt had to direct other
14 Needham employees to help you out on certain tasks because
15 you were not able to do that?

16 A No.

17 Q Okay. Would you deny that Curt had to have other
18 employees help you load and unload equipment off the lowboy
19 and chain it down?

20 A I would not deny that, no.

21 Q Brandon McKay was one of those individuals, correct?

22 A Correct.

23 Q Do you know Ian Macumber?

24 A Yes.

25 Q And he's an employee of the company, correct?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 A Yes.
- 2 Q Do you deny that he had to help you take a backhoe off
3 the lowboy trailer because you didn't know how?
- 4 A No.
- 5 Q You do not deny that?
- 6 A No.
- 7 Q And isn't it true that you also asked Ian Macumber on
8 more than one occasion to start up equipment for you?
- 9 A No.
- 10 Q That's not true?
- 11 A Not true.
- 12 Q You know Tracey Marshall, correct?
- 13 A Yes.
- 14 Q And he's another employee at the company while you were
15 there, right?
- 16 A Yes.
- 17 Q And didn't you ask Tracey Marshall on multiple
18 occasions to help you unload machines from the lowboy
19 because you did not know how?
- 20 A No.
- 21 Q You deny that?
- 22 A I'm denying that.
- 23 Q Okay. You've familiar with Clint McKinley, correct?
- 24 A Yes.
- 25 Q And is it not true that Clint also had to show you how

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 to start certain equipment?

2 A It's true, yes.

3 JUDGE STECKLER: How often did he have to show you,
4 Mr. Gripp?

5 THE WITNESS: He had to show me one time, and then I
6 knew how to do it from there on out.

7 MR. WRIGHT: I'm sorry, Your Honor. I was just
8 letting you -- do you have any other follow-up?

9 JUDGE STECKLER: I don't. I'm sorry.

10 MR. WRIGHT: Oh, no, that's okay.

11 Q BY MR. WRIGHT: Mr. Gripp, did Clint also have to help
12 unload equipment off the lowboy for you?

13 A Yes, we always helped each other.

14 Q Okay. How about Aaron Hamilton?

15 A Yes.

16 Q Did he also help you unload equipment from the lowboy?

17 A Yes.

18 Q Are you familiar with Amber Nielsen?

19 A Yes.

20 Q And she was also employed at the company, right?

21 A Yes.

22 Q Was there at least one occasion where Amber had to help
23 spread rock for you on a job?

24 A No.

25 Q You deny that?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A I'm denying that.

2 Q Okay. Did Amber have to teach you how to drive the tub
3 because you didn't know how?

4 A No.

5 Q You deny that?

6 A I'm denying that.

7 Q Okay.

8 JUDGE STECKLER: Mr. Wright, this will go a lot faster
9 if you don't ask him twice.

10 MR. WRIGHT: Okay. Thank you, Judge.

11 Q BY MR. WRIGHT: Mr. Gripp, do you know whether other
12 company employees complained to Needham management about how
13 you constantly slowed down job sites because you talked too
14 much?

15 A No.

16 Q Would you have any evidence to dispute that they did in
17 fact make those complaints?

18 A No.

19 Q You mentioned that you had videos of you operating
20 machinery. Do you recall that testimony?

21 A Yes.

22 Q And those videos were just you driving the machine in
23 Needham's yard, correct?

24 A No.

25 Q Okay. What were they?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A I have videos and pictures of myself driving and
2 operating machinery on job sites on numerous occasions.

3 JUDGE STECKLER: Were they only in Needham's job sits
4 or any job sites?

5 THE WITNESS: Any job site that we were working at.

6 JUDGE STECKLER: So they -- but this was while you in
7 Needham's employ or elsewhere?

8 THE WITNESS: While I was employed by Needham
9 Excavating, Inc.

10 JUDGE STECKLER: Okay. Thank you.

11 Q BY MR. WRIGHT: Mr. Gripp, you worked on a project
12 that was referred to as a naval station project. Do you
13 recall that?

14 A Yes.

15 Q And did Chad Havill also work on that job?

16 A Yes.

17 Q You would agree that that was at time a very busy job
18 with some 8 to 10 trucks hauling dirt just constantly on the
19 go, correct?

20 A Yes.

21 Q You weren't aware whether or not Chad Havill complained
22 to Curt McKinley about you slowing that job down?

23 A No, I'm not aware of that.

24 Q Mr. Gripp, were you aware as to whether or not you had
25 a reputation amongst your coworkers as being a hot rod

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 driver or driving unsafe or too fast?

2 A No.

3 Q You've never heard that?

4 A No.

5 Q Do you think that's true that you drive too fast?

6 MR. WILLIAMS: Objection. Argumentative.

7 JUDGE STECKLER: Sustained.

8 Q BY MR. WRIGHT: Did Amber Nielsen once stop you in
9 your truck because she saw you speeding through a school
10 zone on a project in Moline, Illinois?

11 A No.

12 Q Okay. Did you work on a project at a 3M plant?

13 A I did. I hauled machinery to and from Knoxville, Iowa
14 at 3M.

15 Q Do you recall Dan Needham telling you on at least one
16 occasion on that job to slow down?

17 A No.

18 Q Do you recall once hitting a pothole in an NEI truck
19 that you were driving and cracking the steering in the
20 truck?

21 A No.

22 Q Do you recall in April of 2019 incidentally being
23 reimbursed by the company, for receiving double
24 reimbursement on a credit card expense that you had?

25 A No.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Do you recall making a comment to Joe Needham to the
2 effect that I don't want to take your trap shooting money?

3 A No.

4 Q Do you deny that that happened, or you just don't
5 recall it?

6 A I deny that that happened.

7 Q You don't have any evidence that any member of Needham
8 management directed any employee to park outside your house
9 and sit in a truck to watch you, do you?

10 A No.

11 MR. WILLIAMS: Objection. Argumentative, Your Honor.

12 JUDGE STECKLER: He's already answered it. Go ahead,
13 Mr. Wright.

14 MR. WRIGHT: Your Honor, if I could have just a couple
15 of minutes, I may be done. I just want to confer with co-
16 counsel.

17 JUDGE STECKLER: Off the record, please, for two
18 minutes.

19 *(Off the record)*

20 JUDGE STECKLER: Thank you. Mr. Wright, do you have
21 other questions?

22 MR. WRIGHT: No, Your Honor. Thank you.

23 JUDGE STECKLER: Mr. Williams, do you have additional
24 questions?

25 MR. WILLIAMS: I do.

1 REDIRECT EXAMINATION

2 Q BY MR. WILLIAMS: Mr. Gripp, during your employment
3 with Needham Excavating, Inc., were you ever disciplined for
4 work performance issues?

5 A No.

6 Q Were you ever disciplined for damaging a piece of
7 equipment?

8 A No.

9 Q Were you ever disciplined for allegedly receiving
10 double reimbursements?

11 A No.

12 Q Were you ever told that work performance issues was the
13 reason for your layoff?

14 A No.

15 Q Were you ever told that you were being laid off for
16 damaging a piece of equipment?

17 A No.

18 Q Were you ever told that you were being laid off for
19 receiving double reimbursements?

20 A No.

21 MR. WILLIAMS: I have no further questions, Your
22 Honor.

23 JUDGE STECKLER: Ms. LaRose?

24 MS. LAROSE: Nothing, Your Honor.

25 JUDGE STECKLER: Mr. Wright, any additional questions?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WRIGHT: No, Your Honor.

2 JUDGE STECKLER: Thank you. Mr. Gripp, you're about
3 to be excused as a witness. You may be subject to recall,
4 however. At this time, please do not discuss your testimony
5 with anyone until after this hearing is over which I'm sure
6 Mr. Williams or Ms. LaRose will let us know. Do you have
7 any questions about this order?

8 THE WITNESS: No.

9 JUDGE STECKLER: Thank you. We'll go off the record
10 while Mr. Gripp leaves and General Counsel calls its next
11 witness.

12 *(Witness excused)*

13 *(Off the record)*

14 JUDGE STECKLER: Mr. Williams, your next witness?

15 MR. WILLIAMS: At this time, Your Honor, General
16 Counsel rests. However, the General Counsel reserves the
17 right to recall any rebuttal witnesses pursuant to the
18 production or presentation of the Respondent's case and
19 pursuant to the review of the revisions concerning General
20 Counsel's Exhibit 6 because the General Counsel, and I don't
21 believe Ms. LaRose either, has had a chance to review those
22 revisions to see if we can reach an agreement on that.

23 JUDGE STECKLER: Okay. In that case, at this point it
24 is the practice to offer an opportunity for the parties to
25 discuss settlement. Do we need to go off the record so that

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 the parties can discuss or are the parties going to think
2 about settlement at all?

3 MR. WILLIAMS: General Counsel is always open to
4 settlement.

5 MR. WRIGHT: Your Honor, Stan was trying to say if we
6 could have a few minutes to confer off the record.

7 JUDGE STECKLER: Okay. We'll go off the record then.
8 Thank you.

9 MR. WRIGHT: Thank you.

10 *(Off the record)*

11 JUDGE STECKLER: We'll go back on the record.

12 MR. WRIGHT: Your Honor.

13 JUDGE STECKLER: Yes.

14 MR. WRIGHT: We're having some technical issues over
15 here. We're trying to get the audio basically transferred
16 over to Mr. Niew's computer as he'll be cross-examining the
17 next witness or if there are multiplies, so we're just
18 trying to get that changed over before we go forward.

19 JUDGE STECKLER: Okay. Back off the record.

20 *(Off the record)*

21 JUDGE STECKLER: On the record. Ms. LaRose.

22 MS. LAROSE: Your Honor, I would like to move to admit
23 Union Exhibit 84, which has been uploaded to SharePoint.

24 MR. WILLIAMS: No objection, Your Honor.

25 MR. NIEW: No objection, Your Honor.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Union's 84 is admitted.

2 **(Union's Exhibit No. 84 received into evidence.)**

3 JUDGE STECKLER: Any additional exhibits, Ms. LaRose?

4 MS. LAROSE: No.

5 JUDGE STECKLER: The Union may call its first witness.

6 MS. LAROSE: We're going to call Spencer Werthmann.

7 (Whereupon,

8 **SPENCER WERTHMANN**

9 having been sworn/affirmed, was called as a witness herein
10 via Zoom, and was examined and testified as follows.)

11 JUDGE STECKLER: Please state your name and spell it
12 for the record.

13 THE WITNESS: Spencer Werthmann, S-p-e-n-c-e-r, W-e-r-
14 t-h-m-a-n-n.

15 JUDGE STECKLER: Mr. Werthmann, is there anybody in
16 that room with you?

17 THE WITNESS: No.

18 JUDGE STECKLER: Do you have any papers in front of
19 you?

20 THE WITNESS: No.

21 JUDGE STECKLER: Have you reviewed any documents since
22 Thursday morning?

23 THE WITNESS: No.

24 JUDGE STECKLER: Have you discussed the case with
25 anybody since Thursday morning?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: No.

2 JUDGE STECKLER: Your witness, Ms. LaRose.

3 DIRECT EXAMINATION

4 Q BY MS. LAROSE: Mr. Werthmann, would you please spell
5 your last name for the record?

6 A W-e-r-t-h-m-a-n-n.

7 Q Okay. And Spencer is spelled S-p-e-n-c-e-r?

8 A Correct.

9 Q Thank you. Mr. Werthmann, can you tell us a little bit
10 about your work history?

11 A I worked for Sunbelt Rentals for roughly four years,
12 worked for a sales company prior to K & K Contracting, and I
13 started for K & K Contracting late September or early
14 October of 2018.

15 Q And how did you get the job at K & K?

16 A My former assistant fire chief said that they were
17 hiring and looking for shop help. I went to the shop and
18 asked if they were hiring. I talked to Bill Bouchard. He
19 asked me when I could start, and I told I'd like to put in
20 my two weeks at my previous job and I could start after
21 that.

22 Q And what job were you hired for?

23 A Shop hand.

24 Q What are the responsibilities of a shop hand?

25 A Sweeping, cleaning the shop, helping mechanics with

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 anything they need help with, helping restock shelves in the
2 parts room.

3 Q Okay. And what does K & K do?

4 A They work on heavy construction equipment, gators,
5 excavators, backhoes, bulldozers.

6 Q And when you say work on, what do you mean by that?

7 A Fix them, maintenance them, service them.

8 Q And how was the shop arranged?

9 A I believe if I remember right, it was five bays. At
10 the east end of the shop they had one big bay that had two
11 doors on it. It was kind of more or less the fabrication
12 side of the shop.

13 Q And whose vehicles -- I'm sorry. Did K & K service
14 Needham vehicles?

15 A Yes.

16 Q And equipment? I'm sorry.

17 A Correct.

18 Q Okay. Did K & K have other customers?

19 A Yes, they would have some contractors. They would
20 service their equipment.

21 Q Okay. And when K & K repaired vehicles for Needham,
22 did it invoice Needham?

23 A As far as I know, yes.

24 Q Are you familiar with an individual named Tim Hamann?

25 A Yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Who was he?

2 A He was a friend of the company. He would come by to
3 say hi and see how things were going. Sometimes if he was
4 buying a piece of equipment or a new truck, he would bring
5 it by the shop and have Bill Bouchard or Jered Nielsen look
6 at it to see if it was worth the buy.

7 Q And when you say friend of the company, do you mean he
8 was a friend of individuals who worked at the company?

9 A Yes.

10 Q Who were those people?

11 A Bill Bouchard, Jered Nielsen, Nick Needham, Dan
12 Needham, Curt McKinley.

13 Q Okay. And so Tim owned his own business?

14 A Correct.

15 Q What was the name of that business?

16 A County Line Excavating.

17 Q And how long did you work at K & K?

18 A Around a year or maybe a little over a year.

19 Q And who regularly worked in the shop?

20 A Bill Bouchard, Jered Nielsen, Amber Nielsen, and
21 myself.

22 Q What were their positions?

23 A Bill Bouchard and Jered, they were service mechanics.
24 Amber I would say was kind of the shop supervisor, and I was
25 a shop hand.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And as a shop manager, what did Amber do during the
2 day?

3 MR. NIEW: Objection. Mischaracterizes testimony.

4 JUDGE STECKLER: In what way, Mr. Niew?

5 MR. NIEW: It was testified that she may have been
6 some sort of a shop foreman, and I think Ms. LaRose used a
7 different term which was not used by the witness.

8 JUDGE STECKLER: Ms. LaRose, I thought -- I thought
9 Ms. LaRose asked what her duties were, but Mr. Werthmann,
10 can you explain what Ms. Amber's duties were?

11 THE WITNESS: She would hand out work orders to the
12 mechanics. She would order parts and pick up parts.

13 JUDGE STECKLER: Did she suggest the order in which
14 jobs would be done?

15 THE WITNESS: Usually in the morning she would hand
16 out work orders for equipment that needed work done, and any
17 parts that needed ordered for that equipment she would order
18 them and go and pick them up from whichever or have them
19 delivered from whichever place that they were ordered from.

20 JUDGE STECKLER: To your knowledge, how did she assign
21 work to the mechanics, if you know?

22 THE WITNESS: Evenly.

23 JUDGE STECKLER: So it was just whoever got finished
24 with their projects first just took the next one?

25 THE WITNESS: Correct.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Ms. LaRose, you may continue.

2 MS. LAROSE: Thank you, Your Honor.

3 Q BY MS. LAROSE: Is it fair to say that she spent most
4 of her day in the shop?

5 A Yes.

6 Q When someone needed a repair, who within the shop would
7 make contact?

8 A They would either call one of the mechanics if the
9 operator would possibly think it was an easy fix that could
10 be done out there, or they would call Amber, and Amber would
11 have one of the mechanics go out and fix the piece of
12 equipment.

13 Q And where did the shop employees report for work?

14 A To the shop.

15 Q And when you say the shop, you mean the K & K shop?

16 A Correct.

17 Q Okay. What time did the employees of K & K generally
18 start work?

19 A At 7 o'clock in the morning.

20 Q And is there repair work done inside the shop?

21 A Yes.

22 Q Okay. How much time on average did Jered and Bill
23 spend in the field doing service calls versus working in the
24 shop?

25 A It just depended on the time of the season of how much

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 work was being done out in the field. If I had to take a
2 guess, I'd say they spend probably 65 or 70 percent of the
3 time in the shop.

4 Q Okay. And did Jered and Bill drive K & K vehicles at
5 work?

6 A Yes.

7 Q And when I say K & K vehicles, were they labeled K & K?

8 A Yes.

9 Q And were the labels on those trucks, the K & K signage
10 on those trucks, the entire time that you were working in
11 the shop?

12 A Yes.

13 Q And have you ever seen Jared or Bill operate heavy
14 equipment?

15 A No.

16 Q And have you ever seen them do construction work with
17 heavy equipment?

18 A No.

19 Q Who did you report to when you were working for K & K?

20 A It would be Bill Bouchard or Amber Nielsen.

21 Q Okay. And who did Bill and Jered report to?

22 A Usually themselves or Amber.

23 Q And what time did the K & K shop employees generally
24 leave for the day?

25 A Usually around 4:30 they would hang out and chit chat

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 for a little while after they get done with their work.
- 2 Q Okay. And what time did you generally leave?
- 3 A At 3:30.
- 4 Q And did you work for K & K all year long?
- 5 A No.
- 6 Q Who else did you work for?
- 7 A Needham Excavating.
- 8 Q And how often were you working for K & K?
- 9 A Usually during the spring and summer.
- 10 Q Okay. And how about Needham?
- 11 A Pardon me? I'm sorry. I answered that last one wrong.
- 12 Q Please go ahead.
- 13 A K & K usually worked all year long. Needham would be
- 14 spring and summer and sometimes fall.
- 15 Q And what kind of work did you preform for Needham?
- 16 A During that time I was running a roller.
- 17 Q Okay. And how often were you doing that?
- 18 A It just depended on the availability of personnel.
- 19 Maybe 30 hours a week would be tops usually at the most.
- 20 Q And were there weeks when you were working for both
- 21 companies?
- 22 A Yes.
- 23 Q Okay. And when did you first start performing work for
- 24 Needham?
- 25 A I'd say late October or early November of 2018.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And how did that come to pass?

2 A I believe Nick came up to the shop and asked if I could
3 run a roller in Clinton, Iowa the next morning.

4 Q And did you agree to do that?

5 A Yes.

6 Q Okay. And then what happened from there?

7 A He sent me the address to the job site and told me what
8 time to be there, and I showed up to the job site where Joe
9 Needham was running the job site, and he explained to me
10 what needed to be done and how to operate the roller.

11 Q Okay. And did you run the roller that day then?

12 A Yes.

13 Q And when you worked for Needham in the morning, what
14 time did you generally start?

15 A At 6:30 or 7 o'clock.

16 Q And where did you report for work when you were working
17 for Needham?

18 A To the job site.

19 Q And how did you know which job site to go to on any
20 given day?

21 A We'd usually get a text message the previous morning or
22 the previous night, or we had an ap on our phone called
23 ScheduleBase that they would upload where we would be
24 working the following day or for the --

25 Q I'm sorry. I interrupted you. Or for the?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 A For the week.
- 2 Q Did you fill out separate timecards for each company?
- 3 A Yes.
- 4 Q When you were working in the shop, how often did you
5 see the operators from Needham?
- 6 A Maybe once or twice a week.
- 7 Q Okay. And if a piece of equipment is broken down and
8 the job its working on is over, did it come back to the shop
9 for repair?
- 10 A If it was able to be taken off the job right away.
- 11 Q Okay. What was your compensation at K & K?
- 12 A Fifteen dollars an hour.
- 13 Q And did you get any benefits?
- 14 A No.
- 15 Q And how often were you paid?
- 16 A Weekly.
- 17 Q And did you get paid by check or direct deposit?
- 18 A Direct deposit.
- 19 Q Okay. And was your compensation the same or different
20 at Needham?
- 21 A The same.
- 22 Q And did you get separate W2s from each company?
- 23 A Yes.
- 24 MS. LAROSE: Your Honor, I'm going to put Union
25 Exhibit No. 10 up on the screen.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q BY MS. LAROSE: Mr. Werthmann, could you take a look
2 at Union Exhibit 10 which we have on the screen now and tell
3 us if you recognize this 4-page document?

4 **(Union's Exhibit No. 10 marked for identification.)**

5 A Yes. It's my bank account.

6 Q And when you say your bank account, you mean your
7 online bank account?

8 A Yes.

9 Q Could you tell us relative to your pay at Needham and K
10 & K what we can see on page 1?

11 A That Friday, May 10th, I had two deposits from K & K
12 Repair and Needham.

13 Q Okay. And we're going to skip to the next page. Can
14 you do the same thing with that page?

15 A On Friday, May 17th, I also had a direct deposit from
16 Needham Excavating and K & K Repair.

17 Q Okay. And the third page?

18 A On Friday, June 21st, I had a deposit from Needham
19 Excavating and K & K Repair.

20 Q Okay. And the fourth page?

21 A On Friday, June 28th, I had a deposit from Needham
22 Excavating only.

23 Q You did not get pay from K & K that week?

24 A Correct.

25 Q Okay. And now during that week did you work at K & K

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 as well as Needham?

2 A Yes.

3 Q So did you question why you were not getting paid from
4 K & K that week?

5 A Yes.

6 Q Tell me what you asked, of whom, and what the response
7 was.

8 A I asked Amber Nielsen why I only got a paycheck from
9 Needham Excavating instead of both companies, and her
10 response was that the payroll was being merged into one for
11 only Needham to be paying use instead of both companies.

12 MS. LAROSE: Your Honor, I'm going to move for
13 admission of Union 10.

14 MR. NIEW: No objection.

15 MR. WILLIAMS: No objection, Your Honor.

16 MS. LAROSE: Your Honor, I think you're muted.

17 JUDGE STECKLER: Thank you, I was. Everybody says no
18 objection. Union 10 is admitted.

19 **(Union's Exhibit No. 10 received into evidence.)**

20 MS. LAROSE: Thank you.

21 Q BY MS. LAROSE: Did the company conduct, and by
22 company, I mean Needham, but did they conduct any meetings
23 leading up to the election in July of 2019?

24 A Yes.

25 Q And how do you know that?

1 A There was a group text message sent out to us all for a
2 mandatory meeting.

3 MS. LAROSE: Your Honor, I'm going to put up on the
4 screen Union Exhibit No. 30.

5 **(Union's Exhibit No. 30 marked for identification.)**

6 Q BY MS. LAROSE: Mr. Werthmann, could you take a look
7 at that document that's marked as Union Exhibit 30 and tell
8 us if you know what that is?

9 A Yeah. It's the group text message that was sent out to
10 us the day before the meeting.

11 Q Okay.

12 MS. LAROSE: Your Honor, I'm going to move for Union
13 Exhibit 30.

14 JUDGE STECKLER: Let's get a little more clarification
15 on it. Mr. Werthmann, who is Boo?

16 THE WITNESS: It would be Dan Needham.

17 JUDGE STECKLER: Okay. And the person who sent it to
18 you is Mr. Nick Needham. Is that correct?

19 THE WITNESS: Correct.

20 JUDGE STECKLER: Okay. Any objections?

21 MR. WILLIAMS: No objection, Your Honor.

22 MR. NIEW: No objection, Your Honor.

23 JUDGE STECKLER: Union 30 is admitted.

24 **(Union's Exhibit No. 30 received into evidence.)**

25 MS. LAROSE: Thank you, Your Honor.

- 1 Q BY MS. LAROSE: Now did you attend this meeting?
- 2 A Yes.
- 3 Q And how long was it?
- 4 A Roughly two hours.
- 5 Q Okay. And who was at the meeting?
- 6 A The operators were, the shop personnel were, and Joe
- 7 Needham was there.
- 8 Q Anybody else?
- 9 A A gentleman by the name of Bill Wheeler was there.
- 10 Q And what happened when you got there?
- 11 A We all just kind of sat at tables amongst each other.
- 12 Joe talked to us a little bit beforehand and introduced the
- 13 gentleman and talked to us about what he wanted to talk to
- 14 us about.
- 15 Q And what was the message of the meeting?
- 16 A In my opinion it was vote how you want to, but you
- 17 should not vote the union in.
- 18 Q Did you record that meeting?
- 19 A Pardon me?
- 20 Q Did you record that meeting?
- 21 A Yes, I did.
- 22 Q And you gave a copy of that recording to us?
- 23 A Correct.
- 24 Q I'm going to play some portions of that recording for
- 25 you. Can you please tell me if you can identify who is

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 speaking and if what you hear is consistent with what you
2 recall from that meeting?

3 **(Union's Exhibit No. 29 marked for identification)**

4 A Okay.

5 JUDGE STECKLER: Ms. LaRose, before we do that, Mr.
6 Werthmann, how did you record that meeting?

7 THE WITNESS: With just a little recording device that
8 I had in my pocket.

9 JUDGE STECKLER: Okay. Ms. LaRose, you may continue.

10 MS. LAROSE: Thank you, Your Honor.

11 *(Audio tape played)*

12 MR. NEEDHAM: *You guys all know what happened here. And*
13 *first thing I want to make perfectly clear, I'm going to do*
14 *everything legally possible not to let this happen. Bill's*
15 *gonna explain how bad that's gonna screw raises and all that*
16 *up in a little bit.*

17 Q BY MS. LAROSE: Mr. Werthmann, can you tell us who was
18 speaking?

19 A At the beginning it was Bill Wheeler introducing
20 himself, and then the second person was Joe Needham. And
21 then he was talking, and you could hear Bill Wheeler kind of
22 chiming in and saying could a couple of times.

23 Q Thank you. We're going to play another portion of this
24 recording.

25 *(Audio tape played)*

1 MR. WHEELER: Now I'm sure the union will never tell
2 you that cause they don't want you to know that. All in all
3 you know what has motivated you to continue to work here.
4 You came in and asked Joe for a job. Or maybe Nick for a
5 job. They hired you and tried to keep you working as long as
6 you abide by the rules of the company. And as long as you
7 don't fracture those rules. Okay. That's what keeps you
8 working. That's the kind of trust that they gave to you and
9 you came in and presented yourself to them to get hired. And
10 they didn't know you from anybody else. Now, Joe is asking
11 for the opportunity, and Nick and Kurt, for the opportunity
12 for you to return that trust to them by basically sending
13 this Union down the road. And you have three days to decide
14 if you're going to do it. You basically, when you bring in a
15 union, you fire them. You take away your ability to go to
16 them on a day-to-day basis. Kurt's not here but either Nick
17 or Kurt or Joe.

18 MR. NEEDHAM: And Boo, yeah.

19 MR. WHEELER: And Boo.

20 And you hire and pay a Union to try and get you more.
21 Or even the same what they have provided for you without you
22 and having to pay for it. That's basically what you're
23 doing and they have at least a year once the election to try
24 and get a contract that does that. If they don't have a
25 contract after a year, you have a right to call for a

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 *decertification vote like you did when you voted them out*
2 *before. But if you don't call for that vote, you have to*
3 *continue to bargain until you get a contract. During that*
4 *whole period of time you fall under what are called*
5 *laboratory conditions of the National Labor Relations Act.*
6 *And I'm gonna share some things with you from this book.*
7 *What that means is that we can't change your pay, we can't*
8 *change your benefits, we can't change your job until you get*
9 *a contract. That contract, in the end, yeah you could end up*
10 *getting more. You could end up with the same, or you could*
11 *end up getting less. But even if you end up the same,*
12 *you're going to end up with less because the dues you gotta*
13 *pay dues out of that.*

14 *So this is about trust and who are you gonna trust and*
15 *obviously, you must have trusted somebody here or you*
16 *wouldn't still be here. You know the need for good people*
17 *today in any industry. It's harder to have to find people.*

18 Q Can you tell us who was speaking during that piece
19 of it?

20 A That sounded like Mr. Bill Wheeler.

21 Q And who uttered the phrase and Boo?

22 A Joe Needham.

23 Q Okay. Was that the only time during this segment
24 starting at 37 minutes 33 seconds in that Joe was speaking?

25 A That's what it sounded like.

1 Q Okay.

2 MS. LAROSE: And for the record, Your Honor, the prior
3 recording started at 13 minutes 51 seconds in. Your Honor,
4 I'm going -- I'm sorry.

5 Q BY MS. LAROSE: Mr. Werthmann, are these -- is this
6 consistent with what you recall from that meeting?

7 A Yes.

8 MS. LAROSE: Your Honor, I'm going to move for
9 admission of Union Exhibit 29 which is the recording.

10 MR. WILLIAMS: No objection, Your Honor.

11 MR. NIEW: No objection.

12 JUDGE STECKLER: Union 29 is admitted. That's the
13 entire two hours, correct?

14 MS. LAROSE: It is, Your Honor.

15 JUDGE STECKLER: Thank you.

16 **(Union's Exhibit No. 29 received into evidence.)**

17 MS. LAROSE: Those are all of my questions for this
18 witness. I'm sorry. Your Honor, my co-counsel is reminding
19 me that we do have a transcript for this, but it's got just
20 enough typos in it of various kinds. I mean I can see just
21 from reading through it. We did it very close to this
22 hearing, but I want to clean it up before I try to introduce
23 it, and then I'll spare opposing counsel from having to do,
24 you know, a list again of what it thinks might be wrong with
25 the transcript. So those are all of my questions for Mr.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Werthmann.

2 JUDGE STECKLER: Mr. Werthmann, before I turn you over
3 to Mr. Williams, can you tell me under what circumstances
4 you left Needham?

5 THE WITNESS: I went on an unfair labor practice
6 strike.

7 JUDGE STECKLER: And when was that?

8 THE WITNESS: It was right after the vote I believe if
9 I remember right.

10 JUDGE STECKLER: Okay. So when you went on strike,
11 you were no longer employed there after July?

12 THE WITNESS: I believe so.

13 JUDGE STECKLER: Okay. Mr. Williams.

14 MR. WILLIAMS: I have no questions for this witness,
15 Your Honor.

16 JUDGE STECKLER: Mr. Niew.

17 CROSS-EXAMINATION

18 Q BY MR. NIEW: Mr. Werthmann, my name is Stanley Niew.
19 Did you give a statement or an affidavit to the NLRB at any
20 time?

21 A No.

22 MR. NIEW: And I ask Mr. Williams, is that correct?

23 MR. WILLIAMS: That's correct.

24 Q BY MR. NIEW: Mr. Werthmann, when you worked at K & K,
25 you never went out on the job sites. Is that correct?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Just if a mechanic would need a hand with a repair.

2 Q And that would be very rare. Would that be also
3 correct?

4 A Yes, sir.

5 Q And therefore you do not know what the mechanics were
6 doing when they were on the job site, isn't that correct?

7 MS. LAROSE: Objection. Misstates the testimony.

8 JUDGE STECKLER: Mr. Werthmann, when you were there,
9 did you have an opportunity to see what the mechanics were
10 doing on the job site?

11 THE WITNESS: When I was with them, yes.

12 JUDGE STECKLER: But only on those occasions. Is that
13 correct?

14 THE WITNESS: When I would work for Needham, I would
15 see the mechanics come out there and repair equipment as
16 well.

17 JUDGE STECKLER: Okay. Thank you. Mr. Niew, you
18 continue.

19 Q BY MR. NIEW: Now you spoke about Amber Nielsen quite
20 often. No one from Needham ever called Amber Nielsen a
21 foreman or a supervisor. Is that correct?

22 A No.

23 Q It's not correct or you're agreeing with me?

24 A Nobody called her that. We would just call her Amber.

25 Q And you don't know where Amber Nielsen got her work

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 assignments from. Isn't that correct?

2 A Correct.

3 Q And when Amber gave out work assignments, she was
4 basically a dispatcher. Isn't that correct?

5 A Yeah.

6 JUDGE STECKLER: Mr. Niew, clarify that a bit because
7 dispatchers do different things at different companies.

8 Q BY MR. NIEW: Do you know what a dispatcher is?

9 A It depends on what you're looking at. I mean if you're
10 looking at 911 response, dispatchers dispatch medical
11 personnel and fire and police.

12 Q All right. How about a trucking company? You know
13 what a trucking company dispatcher does.

14 A Yes, sir.

15 Q And Amber acted in that type of role. Is that correct?

16 A No, she never dispatched truck drivers. She would
17 dispatch mechanics for a service call if they needed work
18 down out in the field.

19 Q Thank you for that clarification. Now when you worked
20 for Needham Excavating, you said you operated a roller? Did
21 I hear that correctly?

22 A Yes, sir.

23 Q And Joe Needham taught you how to operate the roller?

24 A Yes, sir.

25 Q And how long did that training session last?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Less than five minutes.

2 Q And operating a roller is really compacting soil, is it
3 not?

4 A Yes.

5 Q And when we're saying compacting soil, when you got on
6 a roller you would move the roller back and forth to compact
7 that soil?

8 A Yes, sir.

9 Q That was the entire job?

10 A For the most part. Refueling it when it needed
11 refueled.

12 Q And when you were working at Needham, did you ever --
13 I'll withdraw that question.

14 When you were working at Needham Excavating, you never
15 operated any other machinery. Would that be correct?

16 A Correct.

17 Q And when you were operating the roller, did you ever
18 see the mechanics out on the job site?

19 A Every now and then, yes.

20 Q And when you saw the mechanics, did you see them
21 operating equipment?

22 A To start it up, and that's about it.

23 Q Nothing else?

24 A No. They would start it up, make sure it was
25 pressurized. Say they had a hydraulic leak, they'd usually

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 release the parking brake which would free up the hydraulics
2 to make sure it was pressurized right, no leaks. Usually if
3 it was like a scraper, he would have one of the operators go
4 scrape some dirt with it real quick or whatever they were
5 scraping at the time and see if it was doing everything
6 correctly.

7 Q You mentioned a person named Tim Hamann. Do you
8 remember that?

9 A Yes, sir.

10 Q And you say owned County Line Excavating?

11 A Yes, sir.

12 Q How do you know that?

13 A Because you could see it on the semis, and he told us
14 that.

15 Q Hamann told you that?

16 A Yeah.

17 MS. LAROSE: Objection.

18 JUDGE STECKLER: What's the objection, Ms. LaRose?

19 MS. LAROSE: It was asked and answered, Your Honor,
20 but the witness answered well past it, so I'll withdraw the
21 objection.

22 JUDGE STECKLER: Thank you.

23 Q BY MR. NIEW: Now when you were on job sites, you also
24 saw Tim Hamann operate heavy equipment, did you not?

25 A No.

1 Q Did you ever see him on the job site?

2 A No.

3 Q When you were working for Needham Excavating, you
4 actually did not start work until 7:00 a.m. Would that be
5 correct?

6 A At 6:30 to 7 o'clock.

7 Q Right.

8 A So 6:30 in the morning to 7 o'clock in the morning.

9 Q Did you actually start work at 6:30 in the morning at
10 any day while working for Needham?

11 A Yes.

12 Q What date?

13 MS. LAROSE: Objection.

14 JUDGE STECKLER: Mr. Niew, if you've got the timecards
15 showing what days he worked, it might help refresh his
16 memory.

17 Q BY MR. NIEW: If you started work at 6:30 a.m., you
18 would have recorded hours that show you started working at
19 6:30 until the end of the day. Would that be accurate?

20 A Correct.

21 Q When you went on strike, you didn't deliver any letters
22 to Needham Excavating that you were going on strike,
23 correct?

24 A Correct.

25 JUDGE STECKLER: Mr. Niew, what's the relevance of the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 letter?

2 MR. NIEW: He did not deliver the letter. He says
3 that was on strike, but he may have given it to somebody
4 else, but he didn't deliver it.

5 MS. LAROSE: I've got to object on that basis. I
6 don't see what the relevance is if somebody else delivered
7 it.

8 JUDGE STECKLER: And frankly, people can verbally
9 state that they go on strike, so that's not -- I don't know
10 what the relevance is. Just because he went on strike
11 doesn't show anything else.

12 Q BY MR. NIEW: And when you went on strike -- I'm
13 sorry. I withdraw the question.

14 JUDGE STECKLER: Okay.

15 Q BY MR. NIEW: When you went on strike, the Union got
16 you a job. Is that correct?

17 A No.

18 Q Where did you go to work next?

19 A I waited it out. I helped with farmers until I could
20 find a job for the union.

21 MR. NIEW: I have no further questions, Your Honor.

22 JUDGE STECKLER: Mr. Werthmann, I have a question
23 before I turn you back over to Ms. LaRose.

24 While you were getting paychecks that were strictly
25 from Needham, were you still filling out timecards for both

1 Needham and K & K?

2 THE WITNESS: No.

3 JUDGE STECKLER: So you were just filling out
4 timecards for Needham only?

5 THE WITNESS: Correct.

6 JUDGE STECKLER: So it had Needham Excavating at the
7 top instead of K & K?

8 THE WITNESS: Correct. When I was only getting
9 paychecks from Needham.

10 JUDGE STECKLER: Okay. Were you still doing your shop
11 work for K & K?

12 THE WITNESS: Yes.

13 JUDGE STECKLER: Okay. Thank you. Ms. LaRose, you
14 may continue.

15 REDIRECT EXAMINATION

16 Q BY MS. LAROSE: Mr. Werthmann, where are you working
17 now?

18 A I work for Sinclair Tractor in Durant, Iowa.

19 Q Okay. And where -- how far away is Durant from Rock
20 Island?

21 A Oh, 20 minutes, 25 minutes.

22 MS. LAROSE: No further questions for this witness,
23 Your Honor.

24 JUDGE STECKLER: Mr. Niew, do you have any additional
25 questions based on my question?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. NIEW: One question.

2 RECROSS EXAMINATION

3 Q BY MR. NIEW: Sinclair Tractor is a non-union shop?

4 A Correct.

5 MR. NIEW: No further questions.

6 JUDGE STECKLER: Mr. Williams, do you have any
7 additional questions?

8 MR. WILLIAMS: No questions, Your Honor.

9 JUDGE STECKLER: Mr. Werthmann, you're about to be
10 excused as a witness. You may be recalled, so please do not
11 discuss your testimony here or any testimony that you might
12 give in the future with anyone until after the hearing is
13 over. Do you understand these instructions?

14 THE WITNESS: Yes, Ma'am.

15 JUDGE STECKLER: And were you subpoenaed to appear
16 here today?

17 THE WITNESS: Yes.

18 JUDGE STECKLER: Thank you. So Mr. Werthermann, we're
19 going to take you out of the picture, and we're going to
20 discuss lunch, so how about that?

21 THE WITNESS: Okay.

22 MS. LAROSE: Your Honor, can I interrupt just for a
23 moment, please?

24 JUDGE STECKLER: Yes.

25 MS. LAROSE: Ms. Morehead, could you kill the audio on

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 that computer? Do you know how to do that?

2 *(Witness excused)*

3 JUDGE STECKLER: Okay. It is 10 until 1:00 on the eastern
4 time and 10 until noon here. How much time do you need for
5 lunch?

6 MR. WILLIAMS: I think 30 minutes, Your Honor, from
7 the General Counsel.

8 MR. NIEW: This is Stan Niew. That's fine.

9 JUDGE STECKLER: Okay. So about 20 after 12:00
10 central time is okay?

11 MR. NIEW: Your Honor, I have one question. Did the
12 Union rest? I'm not quite sure.

13 MS. LAROSE: I didn't make any mention of resting.

14 MR. NIEW: Okay. I just wanted to make sure, and I
15 understand that you may call a new witness.

16 MS. LAROSE: But let me clarify. I think the only
17 other witness we're going to have is going to be just a few
18 questions for Don Needham, Mr. Niew. So if you guys could
19 have him ready to go right after lunch to talk about the tax
20 returns. It's going to be very short.

21 MR. NIEW: We will text him right now.

22 MS. LAROSE: Okay. Super.

23 JUDGE STECKLER: And about how long will it take for
24 him to get to the facility or to the office?

25 MR. NIEW: We don't know where he is right now. We're

1 trying to find out as we're speaking.

2 JUDGE STECKLER: Okay. We'll check back at 20 after
3 and see if we have any results. If it takes a little
4 longer, that's fine, too. So, Mr. Molinaro, please remove
5 us from the record.

6 (Off the record)

7 JUDGE STECKLER: On the record. Thank you. Ms.
8 LaRose, you may call your next witness.

9 MS. LAROSE: My next witness, Your Honor, is Joe
10 Needham.

11 (Whereupon,

12 JOE NEEDHAM

13 having been previously sworn/affirmed, was recalled as a
14 witness herein via Zoom, and was examined and testified as
15 follows.)

16 JUDGE STECKLER: You've already been sworn in, but you
17 are still under oath, so just in case there's any question,
18 you're still under oath under penalty of perjury. Did you
19 have a good weekend?

20 THE WITNESS: Yes.

21 JUDGE STECKLER: Okay. Have you discussed this case
22 with anybody?

23 THE WITNESS: No.

24 JUDGE STECKLER: Okay. Ms. LaRose, take it away.

25 MS. LAROSE: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 Q BY MS. LAROSE: Mr. Needham, in response to the
3 Union's subpoena, Needham produced a 2018 and 2019 tax
4 return.

5 A Okay.

6 Q Has Needham filed its returns for 2020 yet?

7 A We are on extension until July 1st the way I understand
8 it.

9 Q And then when are you planning to file those returns?

10 A That is up to my CPA. I pay him to take care of the
11 taxes. I give him the information, and he does what he
12 does. That's his job.

13 Q And when is he planning to file them?

14 A Don't know. All I know is the last I heard they were
15 on an extension July 1st of 2021. Whether he has them done
16 by then, I do not have -- I don't know.

17 Q Okay. And has your personal tax return been filed for
18 2020?

19 A No, not to my knowledge. I do not remember signing
20 anything, so yes.

21 Q And when is that going to be filed?

22 A I don't know. That's what the CPA's job is.

23 Q Who is the CPA?

24 A Dustin Kimball at Reiser Jennings.

25 Q And when he files the tax return for you for 2020, he's

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 going to have to report income for K & K, right?

2 A First thing, there is nothing from K & K. And I talked
3 to him about that, and --

4 MS. LAROSE: Your Honor, if I may. I would ask Your
5 Honor to please direct the witness to answer the question.

6 JUDGE STECKLER: Mr. Needham, a lot of Ms. LaRose's
7 questions are going to be yes or no, so if you could just
8 kind of stick to that without giving a lot of explanation.

9 THE WITNESS: Okay.

10 JUDGE STECKLER: If your attorneys want to come back
11 on it later, they will. They'll have an opportunity. Okay?

12 THE WITNESS: Okay.

13 Q BY MS. LAROSE: I'll repeat my question. When your
14 accountant files your tax returns, he's going to be
15 reporting income for K & K for 2020, right?

16 A No.

17 MS. LAROSE: Those are all of my questions.

18 JUDGE STECKLER: Mr. Williams?

19 MR. WILLIAMS: No questions, Your Honor.

20 JUDGE STECKLER: Respondent?

21 MR. NIEW: No questions.

22 JUDGE STECKLER: Mr. Needham, thank you for coming in
23 again. You're about to be excused as a witness. Please do
24 not discuss your testimony with anyone until after the
25 hearing is over. You may exit the room.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 *(Witness excused)*

2 Mr. Niew, are you planning to call Mr. Needham again?

3 MR. NIEW: In our case-in-chief, yes, but not today.

4 JUDGE STECKLER: Not today. Okay. So he's out of
5 there. Ms. LaRose, do you have additional witnesses?

6 MS. LAROSE: No, Your Honor. I just want to confirm
7 one thing though. Your Honor, we were just going to confirm
8 that all of our exhibits got in, but subject to, you know,
9 whatever we've marked that may have mistakenly not got
10 admitted, the Union is going to rest.

11 JUDGE STECKLER: Okay. And we will continue to review
12 documents to make sure that they all got in. Mr. Molinaro
13 and I this morning did some checks. We're still waiting for
14 the GC on the transcript, and I think that's GC-6. Is that
15 correct?

16 MR. WILLIAMS: That's correct, Your Honor.

17 JUDGE STECKLER: Okay. And I think everything else is
18 in, but we'll double check and triple check.

19 As the Union rests, Respondent may call its witnesses.

20 MR. NIEW: Your Honor, at this time we're going to
21 file a Motion to Dismiss a partial -- I think -- yeah, three
22 different charges. We're uploading them right now and
23 filing it. In the meantime, we'll get our next witness
24 ready.

25 JUDGE STECKLER: Okay. It's being filed right now?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. NIEW: It just filed with the Division of Judges.

2 JUDGE STECKLER: And it has been served on the other
3 parties as well, correct?

4 MR. NIEW: Being sent at this moment.

5 JUDGE STECKLER: Okay. I'm going to go off the record
6 and take a look. Okay. Thank you. Off the record.

7 *(Off the record)*

8 JUDGE STECKLER: Back on the record. Okay. We have
9 Respondent's Motion to Dismiss certain allegations based on
10 10(b) that was newly discovered evidence that could not have
11 been discovered or located or placed in the original charge.

12 Mr. Williams, do you have a response?

13 MR. WILLIAMS: I don't right now, Your Honor. I can't
14 respond when I just got the motion five minutes ago. So I
15 would have to do -- yeah, I can't answer that right now.

16 JUDGE STECKLER: Any comment, Ms. LaRose?

17 MS. LAROSE: I'm in the same boat, Your Honor.

18 JUDGE STECKLER: Okay. Well, usually this is
19 something that I have argued on the brief. I do not like to
20 dismiss at this stage because I am not sure that this was
21 the situation of whether it could have been amended with the
22 newly discovered. Furthermore, there are certain cases such
23 as *Redeye* that says that it might been related back to the
24 first charges or earlier charges, so at this time I am not
25 going to grant the Motion to Dismiss.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Respondent may re-urge it at the end of its case, but
2 in the meantime, plan on arguing it in the briefs.

3 Respondent may call its first witness.

4 MR. NIEW: Your Honor, if I may. I think I told Your
5 Honor that I was going to reserve my opening statement until
6 after the General Counsel rested, and I'd like to do that
7 opening statement right now.

8 JUDGE STECKLER: Certainly. Please proceed.

9 OPENING STATEMENT

10 MR. NIEW: Your Honor, the evidence will show that K &
11 K Repair employees were supervised and reported to NEI's
12 management. That's Joe, Nick, Dan, and Curt, which we've
13 had a lot of evidence already.

14 K & K employees repaired equipment used by NEI, and the
15 evidence will show approximately 90 percent of the time that
16 K & K mechanics repaired equipment on job sites. They
17 operated the heavy equipment and also put it under stress
18 which means that they actually simulated working with the
19 equipment.

20 The evidence will further show Amber Nielsen was a
21 truck driver and went to work for K & K as a shop
22 coordinator, would go to job sites, load her truck most
23 every time that she was on a job site. That's what she was
24 employed by both K & K and NEI. She did the loading of the
25 trucks with heavy equipment.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 The evidence will show Amber was never a supervisor,
2 could never hire, fire, or direct work. She was a shop
3 coordinator meaning that she would make certain that K & K
4 and NEI would not run out of parts.

5 When K & K was in existence, the NEI employees often
6 would report to the K & K shop and get assignments. The
7 evidence will further show that Adam was hired as by Joe
8 Needham as an operator when there were very few employees.

9 The evidence will further show when Adam first started,
10 NEI's customer base was virtually all plumbing contractors
11 and that the checking of the grade was done by the plumbing
12 contractors.

13 As time went on, the evidence will show the customer
14 base completely changed and NEI started doing work for
15 owners and became a prime contractor when the duties of the
16 operators changed. The operators were assigned as leadmen
17 to check the grade and sometimes they would have the
18 laborers assist them checking the grade, but the
19 responsibility was to the operators like Adam.

20 The evidence will show Adam built the check grade on
21 two projects at the 11th and 18th Street projects, which were
22 described as major screwups. The evidence will show that on
23 the 18th Street project that Needham lost \$319,000, \$26,600
24 on the 11th Street project, and for hitting the ADA panels,
25 \$833.00. The evidence will show that in history of the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 company nobody destroyed any construction equipment or
2 things laying on the side of the job site. The evidence
3 will show that in the history of the company that there has
4 never been an operator who hit such a pile of materials.
5 The evidence will show that Adam admitted that he falsified
6 his timecards. Adam first also admitted that he screwed up
7 things before his termination. The evidence will show he
8 virtually always failed to grease and oil his machines. The
9 bending of the laser pull is a one-time event, the first and
10 only time for the company. And the 3M project, he showed up
11 two hours late and there were many complaints from employees
12 about safety about Adam.

13 Former employees told Nick in front of Tracey that Adam
14 sat outside his cab and talked to former employees during
15 working hours for pretty close to two hours. Adam blatantly
16 violated the no smoking policy, which he knew, and one
17 instance, he did it directly in front of Dan Needham, also
18 known as Boo, making Dan feel that he was trying to get
19 fired.

20 The evidence will show that he was not known as a union
21 supporter until he had the T-shirt on.

22 The evidence will show that no other management
23 employee coercibly questioned Adam or any other employee in
24 mid-March.

25 The evidence will show that no one from management knew

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 or directed any employee to park any vehicle at or near
2 Brett Gripp's house.

3 The evidence will show where all the employees had
4 worked on the day before and the day after, including the
5 day allegedly that vehicles were parked.

6 Brett Gripp was a truck driver who often was driving
7 too fast. The evidence will show that he was called by his
8 fellow employees a hot rod driver without any real skills.

9 The evidence will show that contrary to his testimony
10 that he would ask supervisors and employees on a regular
11 basis to help him with his work. The evidence will show
12 that no one from management ever threatened to close the
13 plant, promised any benefits, or did anything to coerce any
14 employees.

15 The evidence will show the organizing campaign had
16 nothing to do with union activity, and Adam and Brett would
17 have been fired no matter whether or not there was union
18 activity.

19 That concludes my statement, Your Honor.

20 JUDGE STECKLER: Thank you, Mr. Niew. And who is your
21 first witness?

22 MR. NIEW: Aaron Hamilton. We'll get him set up right
23 now. We didn't have him in the room because we didn't want
24 him listening in by accident.

25 JUDGE STECKLER: Off the record.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 (Off the record)

2 JUDGE STECKLER: Back on the record. Mr. Niew, you've
3 called Mr. Aaron Hamilton. Is that correct?

4 MR. NIEW: I did.

5 (Whereupon,

6 **AARON HAMILTON**

7 having been sworn/affirmed, was called as a witness herein
8 via Zoom, and was examined and testified as follows.)

9 JUDGE STECKLER: Please state your name and spell it
10 for the record.

11 THE WITNESS: Aaron Hamilton, A-a-r-o-n, H-a-m-i-l-t-
12 o-n.

13 JUDGE STECKLER: Mr. Hamilton, is there anybody in the
14 room with you?

15 THE WITNESS: No.

16 JUDGE STECKLER: Okay. Do you have the door shut or
17 open?

18 THE WITNESS: It is shut.

19 JUDGE STECKLER: Do you have any documents in front of
20 you?

21 THE WITNESS: I just have some papers, stuff for me to
22 go over, my affidavits and stuff.

23 JUDGE STECKLER: Okay.

24 MR. NIEW: Your Honor, we were not aware of that.

25 We'll go get them.

1 THE WITNESS: Okay. I'm sorry.

2 JUDGE STECKLER: No. Wait, no, no, no. You called
3 this witness. You're not permitted to see his affidavit at
4 this point, so is this not -- he's your witness. Affidavits
5 don't come out.

6 So the next thing is, Mr. Hamilton, have you discussed
7 your testimony with anyone?

8 THE WITNESS: No.

9 JUDGE STECKLER: Even before the hearing started on
10 Thursday?

11 THE WITNESS: No. Not to the testimony. I guess I
12 don't understand the question.

13 JUDGE STECKLER: Have you talked to say the
14 Respondent's attorneys, the company's attorneys?

15 THE WITNESS: I talked with him briefly roughly a
16 month ago.

17 JUDGE STECKLER: Okay. And since Thursday, have you
18 discussed your testimony with anybody?

19 THE WITNESS: No.

20 JUDGE STECKLER: Okay. You may begin, Mr. Niew.

21 DIRECT EXAMINATION

22 Q BY MR. NIEW: Mr. Hamilton, do you mind if I call you
23 Aaron?

24 A That's fine.

25 Q Aaron, how long have you been employed by Needham

1 Excavating?

2 A Since roughly -- the first time I was employed with
3 them was back in 2001, and then I was off for a little over
4 a year, and pretty much ever since 2003.

5 Q And what was your job when you first started with the
6 company?

7 A Heavy equipment operator.

8 Q And are you still employed by Needham Excavating?

9 A Yes, I am.

10 Q And what is your position today?

11 A Heavy equipment operator.

12 Q Now when you first started with Needham Excavating, did
13 they have a service department for their equipment?

14 A When I first started, most of the -- any in-house
15 service was done by the owners themselves, and then if there
16 was something beyond their control, it was all done through
17 the dealers, Case, John Deere, Caterpillar.

18 Q Are you familiar with a company called K & K Repair and
19 Contracting, LLC?

20 A Yep.

21 Q And do you remember approximately when that company
22 came into being?

23 A I would have to -- I couldn't give you a date or year
24 or anything for sure.

25 Q All right. Did you have occasion to go to K & K Repair

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 and Contracting?

2 A Their shop was on the back side of Needham Excavating's
3 offices, so yes, I've been to the shops many times.

4 Q When you were there, did you observe both K & K and
5 Needham Excavating employees at the same time?

6 A Yes.

7 Q And did you observe any of the K & K employees and
8 Needham employees going back and forth from the shop to
9 Needham's offices?

10 A Yes.

11 Q How often?

12 A Oh, it seemed like it was a daily routine. I mean
13 there weren't any locked doors between the two of them. All
14 of the offices and K & K Repair's area.

15 Q From your perspective based on your observations, could
16 you tell a difference between K & K and Needham Excavating?

17 A I know that they were separate entities.

18 JUDGE STECKLER: Hold on a second. I've lost sound.
19 Off the record. Mr. Hamilton, give me a quick sound check,
20 please. Okay, Mr. Niew, I lost you also. Mr. Wright, give
21 me a shout because I can't hear. Okay, Mr. Wright and Mr.
22 Hamilton -- Mr. Wright is frozen up. Let's go off the
23 record for a moment, please, while things get cleared up.

24 *(Off the record)*

25 JUDGE STECKLER: On the record. Mr. Niew, I

1 apologize. Can you go back about a couple of questions
2 because I lost sound.

3 Q BY MR. NIEW: Aaron, could you tell the difference
4 between Needham Excavating and K & K?

5 A Yes. To my observation they were two separate
6 businesses. K & K did Needham Excavating's repair work.

7 JUDGE STECKLER: How did you -- excuse me, Mr. Niew.
8 How could you tell that, Mr. Hamilton?

9 THE WITNESS: The Needham Excavating's offices were in
10 front of the building. K & K had their separate office and
11 the shop area to the back.

12 JUDGE STECKLER: Okay. And you had said that there
13 was some going back and forth. How often were you there to
14 observe that?

15 THE WITNESS: Maybe once a week toward the end of the
16 day when I turned my paperwork in.

17 JUDGE STECKLER: Okay. Where did you turn your
18 paperwork in?

19 THE WITNESS: I would normally go in through the shop
20 so I didn't make a mess of Needham Excavating's offices, and
21 my paperwork was turned in in the parts room behind Needham
22 Excavating's offices.

23 JUDGE STECKLER: Okay. Do you know what happened to
24 it from there?

25 THE WITNESS: The way I understand it, they had a

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 basket, we would put our paperwork in an envelope, and that
2 was supposed to be there by Tuesday morning. It was picked
3 up Tuesday morning.

4 JUDGE STECKLER: Okay. And --

5 THE WITNESS: From the previous week.

6 JUDGE STECKLER: So the envelope, was it separate from
7 K & K envelopes or would it all just go in one envelope?

8 THE WITNESS: Each employee has their own envelope.

9 JUDGE STECKLER: Okay.

10 THE WITNESS: For Needham Excavating.

11 JUDGE STECKLER: Okay. Did you see the K & K
12 envelopes?

13 THE WITNESS: I don't ever recall seeing any K & K
14 envelopes.

15 JUDGE STECKLER: Okay. I'm sorry to interrupt, Mr.
16 Niew. You may proceed.

17 Q BY MR. NIEW: Do you know Bill Bouchard?

18 A Yes, I do.

19 Q And what did you know Bill Bouchard to be doing for
20 either company?

21 A He was a mechanic.

22 Q And do you know Jered Nielsen?

23 A He is a mechanic also. Yes, I know him.

24 Q And who did he work for at least from the start?

25 A As far as I know he always worked for K & K Repair.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Now did you ever see Jered Nielsen and Bill Bouchard on
2 job sites?

3 A Yes. They would come out to the job sites to repair
4 equipment.

5 Q And after they repaired the equipment, what would you
6 observe?

7 A They would -- if needed, they would operate the
8 equipment to make sure that it's operating properly.

9 Q And did they put the equipment under stress?

10 A Yes, if it was needed.

11 JUDGE STECKLER: Define stress for me, Mr. Hamilton.

12 THE WITNESS: They would actually dig with it or move
13 material with it.

14 JUDGE STECKLER: Okay. And did --

15 THE WITNESS: They were actually loading it up.

16 JUDGE STECKLER: So they were testing it out?

17 THE WITNESS: Correct.

18 JUDGE STECKLER: How long would they do that? Until
19 they were satisfied or --

20 THE WITNESS: I would imagine until they were
21 satisfied with its operation.

22 JUDGE STECKLER: So how long would that normally be?

23 THE WITNESS: It could be anywhere between probably 10
24 minutes and a half hour. If there was like -- if there was
25 an issue where it was an intermittent problem, it would be a

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 longer time period that they would test it out.

2 JUDGE STECKLER: Okay. So in your mind they were there
3 to repair the equipment, correct?

4 THE WITNESS: Correct.

5 JUDGE STECKLER: Okay. I just wanted to make sure I
6 was understanding all of this correctly because obviously
7 that didn't work on that type of a job site. My idea of a
8 stress test is putting someone on a treadmill.

9 THE WITNESS: I understand.

10 JUDGE STECKLER: So when they were out there,
11 approximately -- so they would fix it, and then they test
12 it, and then what would happen?

13 THE WITNESS: They would pick their tools up and let
14 us know that the machine is prepared to work again, and they
15 would move on to the next problem.

16 JUDGE STECKLER: Okay. Thank you. I'm sorry to keep
17 interrupting you, Mr. Niew. I have to ask questions when I
18 think of them.

19 Q BY MR. NIEW: Aaron, do you know an Adam VanOpDorp?

20 A Yes.

21 Q And how do you know him?

22 A He was an operator with Needham Excavating.

23 Q And did you work on job sites with him?

24 A Not very often, but yes, there were times that I would
25 work with him.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Were there times where you were at a job site where you
2 would see what time Adam would start working?

3 A Yes, there were times that he would pull in late.

4 Q Did you have on occasion to see Adam leave at the end
5 of the day?

6 A I noticed him where he would leave before everybody
7 else, which is pretty much in the construction world
8 everybody works until that day's job is done. So I would
9 consider that leaving early.

10 Q Did you -- well, first of all, who do you consider as
11 Needham Excavating's manager?

12 A That would be Joe Needham, Nick Needham, Dan Needham,
13 and Curt McKinley.

14 Q Now --

15 JUDGE STECKLER: Mr. Niew, in what timeframe are you
16 asking?

17 Q BY MR. NIEW: During your entire employment.

18 A That's pretty much been my whole time there. I haven't
19 had any other -- that's pretty much who I believe is in the
20 management part of Needham Excavating.

21 Q Now you just testified about Adam coming in late and
22 leaving early. Did you tell anybody from management about
23 the late starts and early leaving?

24 A I believe I talked with Nick about it a couple of
25 different times. Mainly that some other people are a little

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 bit unhappy with his arrival and departure times while
2 they're still working.

3 Q Were you at a 3M project with Adam?

4 A Yes, I was.

5 Q And do you remember what happened there with respect to
6 Adam's starting time or leaving?

7 A I know like there was a couple of times when he was --
8 we were getting there for the first day. I wasn't there
9 very much with him, but he would pull in late. It was --
10 the way we were doing it, we were driving from home the
11 first day and working. It was a two-hour drive, so we were
12 working that first day and then we'd spend the rest of the
13 week in a hotel there.

14 Q Do you remember how late Adam was in the time that you
15 observed at the 3M project?

16 A No, I wouldn't be able to say for sure.

17 Q Did Needham Excavating have a policy about talking on a
18 phone while operating heavy equipment?

19 A Yes.

20 Q What was the policy?

21 A Not supposed to be using a phone while you're operating
22 equipment especially around people.

23 Q Did you ever see Adam talking on the phone while
24 operating equipment?

25 A Quite regularly.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And can you describe how he held the phone?

2 A He mainly held it with his shoulder as he was operating
3 and talked into it that way.

4 Q Meaning -- can you demonstrate with your hand how he
5 might be --

6 A Yeah. He'd have it pinched between his shoulder and
7 his ear.

8 MR. NIEW: Let the record reflect that the witness
9 took his hand and put it next to his face and shoulder to
10 demonstrate where the phone is.

11 JUDGE STECKLER: And you kind of tilted your head so
12 you could hold it in place. Is that correct, Mr. Hamilton?

13 THE WITNESS: Correct.

14 JUDGE STECKLER: Okay. Thank you.

15 Q BY MR. NIEW: Now did you ever complain to anybody
16 about Adam talking on the phone and operating equipment?

17 A I don't believe I ever complained to anybody or to any
18 management or anything. I probably told the laborers to
19 keep an eye on him and make sure he's not swinging around
20 haphazardly.

21 Q Now when you saw Adam talking on the cell phone and
22 operating heavy equipment, did you ever see him wear ear
23 pods?

24 A No.

25 Q Did you ever see Adam wear ear pods at any that you

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 saw?

2 A Not that I can recall.

3 Q Now was there a policy with respect to heavy equipment
4 about smoking?

5 A Yes. The company policy was we weren't supposed to
6 smoke in the cab, in an enclosed cab. Anything that had an
7 open (inaudible) was not an issue, but if it was a cab with
8 windows and climate control, that was off the table.

9 Q Now in your occasions that you saw Adam on job sites,
10 did you ever see Adam smoking in the cab?

11 A Yep, quite regularly.

12 Q How often?

13 A Quite regularly.

14 Q When you say quite regularly, virtually all day?

15 A Every day and most of the day. Most of the time during
16 the day.

17 JUDGE STECKLER: Mr. Hamilton, as a point of
18 clarification, how often did you work with Mr. VanOpDorp?

19 THE WITNESS: I did not work with him a whole lot.
20 Normally, I work with plumbing companies pretty much by
21 myself. It was just when we were slow there, I'd fill in.

22 JUDGE STECKLER: Okay. Thank you.

23 Q BY MR. NIEW: Now as an operator, who was responsible
24 for making sure the grade is correct when installing pipe?

25 A Your ground man is ultimately the person that -- I mean

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 he's in the ground, he's on the ground where the measuring
2 is taking place. At Needham Excavating, the operator is
3 normally the one that's setting the grades and making sure
4 the numbers are correct.

5 Q Are you okay? Do you need --

6 A No, I'm okay.

7 JUDGE STECKLER: You sounded a little short of breath.
8 Do you need a break?

9 THE WITNESS: No, I'm good.

10 JUDGE STECKLER: Okay.

11 Q BY MR. NIEW: Did you ever learn that the Operating
12 Engineers Local 150 was mounting a campaign to reorganize
13 Needham Excavating?

14 A Yeah. It was the spring of 2019 I believe.

15 Q And how did you find out?

16 A I believe I got a text from a BA or one of their
17 officers. I'm not really sure who it was, and then later on
18 a couple of guys started talking about it.

19 Q Do you know an Amber Nielsen?

20 A Yes, I do.

21 Q And who is she?

22 A She is currently a manager of K & K's shop. She was a
23 truck driver originally.

24 Q Has anybody ever told you that Amber has the ability to
25 hire, fire, and discipline?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A No.

2 Q Have you ever heard her hire, fire, or discipline?

3 A No.

4 JUDGE STECKLER: Have you heard anybody at Needham
5 discipline?

6 THE WITNESS: Excuse me?

7 JUDGE STECKLER: Has anybody at Needham to your
8 knowledge ever been disciplined?

9 THE WITNESS: I don't know of anybody that has been
10 disciplined, but --

11 JUDGE STECKLER: Okay.

12 THE WITNESS: -- that's not part of my --

13 JUDGE STECKLER: Well, wouldn't somebody tell you they
14 got disciplined perhaps in all the time you've been there?

15 THE WITNESS: I can't -- it's not like I'm great
16 friends with everybody, you know. I don't know that they
17 would technically tell me that they had been disciplined.

18 JUDGE STECKLER: Okay. Thank you, Mr. Hamilton. Mr.
19 Niew, you may continue.

20 Q BY MR. NIEW: Yes. The follow-up on the word
21 discipline. Do you consider when somebody from management
22 chews you out as discipline?

23 A Well, it depends on what they're chewing you out for, I
24 guess. If it's something that they are looking at or they
25 want something done the way -- in a certain way and you're

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 doing it differently, then yes, I guess that would be
2 discipline.

3 Q Have you ever heard such a discipline?

4 A Yes.

5 Q From who and to whom?

6 A Well, it's normally either from Joe, Nick, or Curt.

7 Q And to whom?

8 A I mean I've had it happen to me, so yeah, I guess in
9 that sense it would be discipline.

10 Q Now were you ever a member of Operating Engineers Local
11 150?

12 A Yep.

13 Q For how long?

14 A Roughly 17 years or 18 years.

15 Q Did you attend a meeting with union representatives
16 Marshall Douglas and Shannon Vickers in an evening about a
17 week prior to the election?

18 A Yes, I did.

19 Q Who else was there?

20 A Adam, Brett Gripp, and Chad Havill.

21 Q And do you remember what the Union said in that
22 meeting?

23 A They talked about what the Union could offer their
24 employees of which -- as a union member, I already knew most
25 of that. They discussed what was going to happen during or

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 after the vote depending on which way it went and whether I
2 was willing to walk out on Needham Excavating, and I
3 basically told them that I wasn't just going to up and leave
4 just because a vote went one way or the other. I kind of
5 believe that you should give notice before leaving the
6 company. And I know that they stated that they could --
7 that I left, they would make sure I had a certain amount of
8 insurance and my A-card back.

9 Q When you say A-card, that would be a Class A union
10 card?

11 A Correct.

12 Q Now about the insurance, did they talk about waiving a
13 waiting period?

14 A Yes, they said they could give me three months so that
15 I had a chance to build up enough to get the remaining year
16 paid for.

17 Q Do you know who Clint McKinley is?

18 A Yes.

19 Q Who is he?

20 A He is Curt McKinley's brother. He was a lowboy driver
21 for Needham Excavating from the time I started.

22 Q Did you ever see Clint operate heavy equipment?

23 A Yes. While he was the lowboy operator, he would
24 occasionally help out rolling in dirt and discing if needed.

25 Q What is discing?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Basically, it's a farm term where you go turn the dirt
2 over, and then you let it air out, and then you continue
3 doing that until it's dry enough that you can compact it.

4 Q Now who is Kenny McAdoo?

5 A He is a laborer/operator for Needham Excavating right
6 now.

7 JUDGE STECKLER: What was he in 2019?

8 THE WITNESS: In 2019, mostly a laborer, but he did do
9 some operating also.

10 JUDGE STECKLER: Okay. Thank you.

11 THE WITNESS: You're welcome.

12 Q BY MR. NIEW: Did you ever see Kenny operate a backhoe
13 loader?

14 A Yes, he's operated backhoes, skid loaders, rollers, and
15 I've seen him in excavators.

16 Q Have you ever worked with -- well, first of all, do you
17 know who Rick Needham is?

18 A Yes, I do.

19 Q Would you tell us who he is?

20 A He's Joe Needham's brother.

21 Q And have you ever seen -- well, can you tell me what
22 you have seen him doing?

23 A As a rule, he's one of our truck drivers, but he does
24 operate with a disc and a roller on dirt jobs, and then I've
25 seen him loading trucks with excavators.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Did he do that before June of 2019?

2 A I believe so, but I wouldn't -- I don't know that I can
3 swear to that.

4 Q Now do you know Brett Gripp?

5 A Yes, I do.

6 Q And how do you know him?

7 A He came to work at Needham Excavating as a truck driver
8 several years ago. He was a dump truck driver. He kind of
9 transitioned into the lowboy driver.

10 Q You've seen him on job sites?

11 A Occasionally, yes.

12 Q Did you ever see him operate heavy equipment?

13 A No, I did not.

14 Q Did Brett Gripp ever ask you for help with respect to
15 loading or unloading equipment?

16 A On a couple of occasions.

17 Q And what did he ask you to do?

18 A Normally if he did, it was if I could load the
19 equipment, and then make sure that he got everything chained
20 down properly so they didn't have to worry about it leaving
21 the trailer.

22 JUDGE STECKLER: Was that unusual that anybody ask for
23 assistance, Mr. Hamilton?

24 THE WITNESS: Normally, I mean if we're there and
25 available, we pretty much just helped, but as far as asking

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 for assistance, yeah, that was unusual. It was more like he
2 was unsure of what he was doing.

3 JUDGE STECKLER: So that's what you thought when he
4 asked? Is that --

5 THE WITNESS: Correct. It seemed like he was unsure.

6 JUDGE STECKLER: Did you ask him whether he was unsure
7 about it?

8 THE WITNESS: I didn't specifically ask him.

9 JUDGE STECKLER: Okay. What did you ask him?

10 THE WITNESS: I basically just told him, yeah, I'll
11 give you a hand because I've got the time, you know.

12 JUDGE STECKLER: Okay. You said it was just a couple
13 of occasions? Is that correct?

14 THE WITNESS: Yes, just a couple of occasions that I
15 was around when he was loading equipment.

16 JUDGE STECKLER: Okay. Go ahead, Mr. Niew.

17 Q BY MR. NIEW: Did you ever tell anybody from
18 management about those two occasions?

19 A I believe I talked to Curt once about -- I think it was
20 the deal out at 3M.

21 Q Now did you ever hear anybody from management, Joe,
22 Nick, Curt, or Dan ask any employee on how they were going
23 to vote?

24 A I never heard any of that.

25 Q Did you ever hear any of the management people threaten

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 to close the shop --

2 A I never heard --

3 Q -- if the vote went the wrong way?

4 A I never heard any of that

5 Q Did you hear any threats about voting for the union
6 would result in some sort of a discipline?

7 A No.

8 Q Did anybody from management ever promise you any perks
9 or money or anything for voting against the union?

10 A No, they did not.

11 Q Did you hear anybody from management ask that same
12 question of anybody who was working for Needham Excavating?

13 A No, I did not hear anybody bring that up.

14 Q Now other than working as an operator, did you ever
15 work on any other type of work for Needham Excavating?

16 A Oh, I'd help out the laborers and plumbers whenever it
17 was needed. If a repair on the equipment was simple enough
18 and I could handle it, I took care of those types of things
19 also.

20 Q Would it be fair to say you did clean up?

21 A Yep. I'd help clean up job sites.

22 Q Did you ever drive a truck?

23 A Yes.

24 Q How often?

25 A Towards the beginning, as needed. It might be a day

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 here.

2 Q Were you ever involved in doing any carpentry for
3 Needham?

4 A Yes, I've helped them with some building maintenance.

5 Q Who else might have been with you with this building
6 maintenance?

7 A Just normally Curt and Dan, and then we have a couple
8 of or a few of the laborers would be there. And a couple of
9 operators would be there also.

10 Q And who are those operators if you recall?

11 A I know Braydon Harvey helped with the building.
12 Brandon McKay, Ian Macumber. Curt McKinley helped out.

13 Q Now did you ever see anybody -- I withdraw that
14 question.

15 Were you ever involved where electrical work was being
16 done by Needham employees?

17 A I was not involved, no.

18 Q Did you voice your support for the union to Needham
19 Excavating management?

20 A I explained to them that I believed there was an
21 important part of the union.

22 JUDGE STECKLER: Mr. Hamilton, when did this
23 discussion take place?

24 THE WITNESS: It probably would have been 2018 or
25 2019. I mean back when I first started, Joe and I would

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 discuss the differences the union -- or the need for unions.
2 And that would have been back in the early 2000s.

3 JUDGE STECKLER: Okay. Now the discussion you had,
4 was it before -- in the later years, was that before the
5 organizing campaign started?

6 THE WITNESS: Yeah. It was probably before the
7 organizing started.

8 JUDGE STECKLER: Okay. You may continue, Mr. Niew.

9 Q BY MR. NIEW: Do you recall the decertification
10 election in 2017?

11 A Yes, I do.

12 Q Do you remember any threats or anything from management
13 during that campaign?

14 A No.

15 Q So if I asked you all the same questions your answers
16 would not change?

17 A Correct.

18 MR. NIEW: Your Honor, may I have two minutes to
19 discuss with my co-counsel?

20 JUDGE STECKLER: I'll give you five, and we'll go off
21 the record.

22 *(Off the record)*

23 JUDGE STECKLER: On the record. Mr. Niew, you said
24 you had a few follow-up questions.

25 MR. NIEW: I do.

1 Q BY MR. NIEW: Aaron, after the union election in July
2 of 2019, did you voluntarily tell Needham management that
3 you voted for the union?

4 A Yes, I did.

5 Q Who did you tell?

6 A I talked to Joe himself.

7 Q And you didn't receive any discipline since then, did
8 you?

9 A No.

10 Q I'd like to go back to the decertification election in
11 2017. Do you recall that?

12 A Yes.

13 Q And similarly, after that election, did you tell
14 management that you voted not to be decertified?

15 A Correct.

16 Q And you were never disciplined for that either, were
17 you?

18 A No, I was not.

19 MR. NIEW: I have no further questions.

20 JUDGE STECKLER: Mr. Williams?

21 MR. WILLIAMS: Yeah, I have a couple.

22 CROSS-EXAMINATION

23 Q BY MR. WILLIAMS: So, Mr. Hamilton, I think you've
24 already testified that you're not sure how often you worked
25 with Adam VanOpDorp while he was employed with Needham

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Excavating?

2 A No, I couldn't tell you how often. It would be a day
3 here or a day there. It depended on the schedules.

4 Q Do you remember what year?

5 A Pretty much from the time Adam started until he left it
6 would be, you know, their schedules bounce around all the
7 time, so it pretty much depended on where the work was.

8 Q Okay. But Mr. VanOpDorp worked for Needham for several
9 years, but you don't remember how often -- you know, when
10 you worked with him, the years?

11 MS. LAROSE: Asked and answered. Objection,

12 JUDGE STECKLER: I think it was a broader question.
13 Go ahead and answer, Mr. Hamilton.

14 THE WITNESS: All right

15 A BY THE WITNESS: I don't know. I can't tell you when
16 Adam started. I don't recall that. Like I said, my main
17 job at Needham Excavating was working for different
18 contractors, the different plumbing contractors, so that's
19 mostly where I was at. If we would have down time from
20 those contractors, they would fill me in with work with
21 different people at Needham Excavating. So to give you -- I
22 might not see any employees besides -- or on the job for
23 three or four weeks at a time. Does that make sense?

24 Q Yes, it absolutely does.

25 A Okay.

1 Q You made reference to the 3M project. When did you
2 work on the 3M project?

3 A I couldn't even tell you what year that was. I was
4 down there off and on as they needed an operator.

5 Q Okay. You don't know if it was 2017, 18, 19?

6 A All the jobs kind of just lump together.

7 Q And you testified that you saw Adam VanOpDorp on the
8 phone while he was operating heavy equipment?

9 A Yes.

10 Q Do you know who he was talking to when he was on the
11 phone?

12 A No, I do not.

13 Q So it could have been Joe Needham or Nick Needham or
14 management?

15 A Yes, it could have been.

16 Q And you said you saw Mr. VanOpDorp smoke in the cab of
17 the heavy equipment?

18 A Yes.

19 Q Do you know when that was?

20 A Pretty much the whole time he was there.

21 Q Okay. So how often did you say you saw him smoke?

22 A Pretty much any time I was on the same job as him,
23 which there again, I can't tell you --

24 Q You don't remember?

25 A No.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay.

2 JUDGE STECKLER: Mr. Hamilton -- excuse me just a
3 second. Was Mr. VanOpDorp assigned a specific machine all
4 the time?

5 THE WITNESS: No, but it depends on the job and what
6 machine. We kind of rotate equipment depending on what is
7 the most beneficial for that job.

8 JUDGE STECKLER: Okay. Thank you.

9 Q BY MR. WILLIAMS: Going back to when you saw Mr.
10 VanOpDorp smoking in the cab. Did you ever report that to
11 management?

12 A One time I remember.

13 Q Okay. And when was that?

14 A That would have been roughly five or six years ago.
15 Adam -- it was in the wintertime. Adam was over operating a
16 rubber-tired backhoe on a job in Illinois, and I don't
17 remember why, but the next day I was sent over there to
18 finish up that job, and I contacted Nick about it because I
19 had to run the machine with the windows open pretty much the
20 whole day because it reeked of cigarette smoke.

21 Q How do you know that Adam VanOpDorp operated that
22 particular machine?

23 A I was told he was the operator from the laborers that
24 were there.

25 Q And who told you that?

1 A The laborers that were on the job. I couldn't give you
2 the names at that particular time.

3 Q But other than them telling you that, you have no
4 personal knowledge as to --

5 A I did not see him in it, no.

6 Q So with respect to Mr. Gripp, you had testified that he
7 asked you to help him load equipment.

8 A Yes.

9 Q Do you remember when he asked you to load equipment?

10 A The one time I remember was out at the 3M plant in
11 Knoxville.

12 Q Do you remember when that was?

13 A That year that we were down there, that spring. What
14 year I don't -- like I say, I don't keep track of that sort
15 of stuff.

16 Q What did he ask you to help him load?

17 A I believe we were loading a roller to come back to
18 Walcott.

19 Q So does it take one or two people to I guess load a
20 roller?

21 A One person.

22 Q Can do it?

23 A Yep.

24 Q Okay. You said you reported this incident to Curt? Is
25 that Curt McKinley?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A I believe I did talk to Curt about that, yes.

2 Q Do you know when you talked to Curt about that?

3 A Probably on my drive home that day because that was a
4 Friday.

5 Q But you don't remember when that was?

6 A No.

7 MR. WILLIAMS: I have no further questions.

8 JUDGE STECKLER: Ms. LaRose?

9 MS. LAROSE: No questions, Your Honor.

10 JUDGE STECKLER: Mr. Niew, any redirect?

11 MR. NIEW: I have a follow-up.

12 REDIRECT EXAMINATION

13 Q BY MR. NIEW: Aaron, the Judge asked you were you
14 assigned to a specific machine I believe.

15 A Uh-huh.

16 Q Do you know any operator that was assigned to a
17 specific piece of heavy equipment?

18 A At Needham Excavating, no.

19 MR. NIEW: No further questions, Your Honor.

20 JUDGE STECKLER: Just one moment, please. I'm
21 checking my notes.

22 EXAMINATION BY COURT

23 JUDGE STECKLER: Mr. Hamilton, why did you feel the
24 need to tell management how you voted in the election?

25 THE WITNESS: Because for the most part we've always

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 been honest with each other since I've been there.

2 JUDGE STECKLER: Okay. Can you tell me a little bit
3 about the last time you discussed this and with whom you
4 discussed it?

5 THE WITNESS: I'd say I believe it was Joe I talked to
6 about it. We were just talking at the shop one day and
7 discussing the things that were going on with the union.

8 JUDGE STECKLER: How soon after the election did this
9 conversation take place?

10 THE WITNESS: Probably a week or two weeks later.

11 JUDGE STECKLER: Had you told anyone who you thought
12 the leader of the organizing was?

13 THE WITNESS: The last organizing deal?

14 JUDGE STECKLER: Yeah, in 2019.

15 THE WITNESS: The way I understood it, it was Adam,
16 but I didn't really talk to anybody about it.

17 JUDGE STECKLER: Okay. Did anyone say -- did any of
18 your fellow employees say anything to you about their
19 perception that Adam was the leader?

20 THE WITNESS: No, not that I recall.

21 JUDGE STECKLER: Okay. I have no further questions.
22 Mr. Niew, do you have any questions based on what I just
23 asked?

24 MR. NIEW: Not of this witness.

25 JUDGE STECKLER: Mr. Williams?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WILLIAMS: No further questions, Your Honor.

2 JUDGE STECKLER: Ms. LaRose?

3 MS. LAROSE: No, Your Honor.

4 JUDGE STECKLER: Mr. Hamilton, you're about to be

5 excused, but you might be recalled at some later date.

6 Please do not discuss your testimony with anyone until after

7 this hearing is over, okay?

8 THE WITNESS: Okay.

9 JUDGE STECKLER: Someone will let you know.

10 THE WITNESS: Okay.

11 JUDGE STECKLER: You might probably will hear it in

12 the shop. Thank you so much for your time.

13 *(Witness excused)*

14 We'll go off the record at this point so Respondent can

15 call his next witness.

16 MR. NIEW: Thank you, Your Honor.

17 *(Off the record)*

18 JUDGE STECKLER: We are back on the record.

19 Respondent may call its next witness.

20 MR. NIEW: We call Ian Macumber.

21 *(Whereupon,*

22 **IAN MACUMBER**

23 having been sworn/affirmed, was called as a witness herein

24 via Zoom, and was examined and testified as follows.)

25 JUDGE STECKLER: Please state your name and spell it

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 for the record.

2 THE WITNESS: Ian Macumber, I-a-n, M-a-c-u-m-b-e-r.

3 JUDGE STECKLER: Mr. Macumber, are you in that room by
4 yourself?

5 THE WITNESS: I am.

6 JUDGE STECKLER: Is the door open or shut?

7 THE WITNESS: Shut.

8 JUDGE STECKLER: And do you have any papers in front
9 of you?

10 THE WITNESS: I do not.

11 JUDGE STECKLER: Okay. And have you discussed your
12 testimony with anyone?

13 THE WITNESS: No.

14 JUDGE STECKLER: Not ever?

15 THE WITNESS: I don't believe so, no, no.

16 JUDGE STECKLER: Okay. Were you subpoenaed to testify
17 today?

18 THE WITNESS: I must be. I'm here.

19 JUDGE STECKLER: Well, did you receive something in
20 the mail that had a piece of paper that said you have to
21 appear at X place?

22 THE WITNESS: No.

23 JUDGE STECKLER: No. Okay. Who told you that you had
24 to be here?

25 THE WITNESS: Curt told me to come here.

1 JUDGE STECKLER: Okay. Are you represented by
2 counsel?

3 THE WITNESS: No.

4 JUDGE STECKLER: Okay.

5 THE WITNESS: I've never done this. I'm sorry.

6 JUDGE STECKLER: That's okay.

7 THE WITNESS: I don't have any idea what's going on.

8 JUDGE STECKLER: There's no wrong answers.

9 THE WITNESS: Okay.

10 JUDGE STECKLER: This is not like the trial that just
11 ended in Minneapolis at all, okay?

12 THE WITNESS: Okay.

13 JUDGE STECKLER: Just to let you know. Mr. Niew, you
14 may continue with your questioning today.

15 DIRECT EXAMINATION

16 Q BY MR. NIEW: May I call you Ian?

17 A Yes.

18 Q Do you have a nickname?

19 A I do.

20 Q What is it?

21 A Pickle.

22 Q And are you a current employee of Needham Excavating?

23 A Yes.

24 Q And do you remember approximately when you were hired
25 by Needham?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Needham Excavating or when I started at K & K?

2 Q Well, let's go with K & K first. When did you start at
3 K & K?

4 A It would have been around probably May of '13 or
5 sometime in the spring of '13 I believe.

6 Q And what did you do at K & K?

7 A Some laborer and some operator work. A little bit of
8 both.

9 Q And when you say laborer work, was that at a job site,
10 in the shop, or elsewhere?

11 A Both job sites and at our shop. Not very often at the
12 shop. Mainly job sites.

13 Q Okay. You said you did operator work. Can you
14 describe what operator work you did at K & K?

15 A Wheel loader mainly and some excavator work.

16 Q And do you remember any of the job sites from K & K?

17 A Reds Crushing, the crushing site. That's where I spent
18 the majority of my time.

19 JUDGE STECKLER: Mr. Macumber, when was that job?

20 THE WITNESS: When?

21 JUDGE STECKLER: Yes, sir.

22 THE WITNESS: Back in '13 and up until -- I don't know
23 the date when they sold it, but about three years ago or
24 four years ago.

25 JUDGE STECKLER: Okay. Thank you.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: Uh-huh.

2 Q BY MR. NIEW: Now you are currently employed by
3 Needham Excavating?

4 A I am, yes.

5 Q And approximately when did you get employed by Needham
6 Excavating?

7 A In 2015 I believe in the springtime, I think.

8 Q Could it have been 2016 in the spring?

9 A Yeah, that sounds better.

10 Q And what were you hired as?

11 A An operator.

12 Q A heavy equipment operator?

13 A Yes, sir.

14 Q And were you ever a member of Operating Engineers Local
15 150?

16 A Yes. I was a (inaudible) hand.

17 Q When were you a member?

18 A It would have been when I came to Needham in '16. I
19 believe it was one year.

20 Q When you were a member of Local 150, did you have
21 health insurance through the union health fund?

22 A I don't know. I wasn't in yet. I had to do so many
23 hours I believe before I was eligible.

24 Q Do you know -- are you saying there was a waiting
25 period to become eligible?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 A I believe so, yes.
- 2 Q Do you remember what that waiting period was?
- 3 A I don't. I don't recall or remember.
- 4 Q I just want to confirm. You're still employed by
- 5 Needham Excavating at this moment?
- 6 A Yes.
- 7 Q And are you working as an operating engineer or an
- 8 operator?
- 9 A Yes.
- 10 Q Now did you know Adam VanOpDorp?
- 11 A Yes.
- 12 Q How do you know him?
- 13 A Through -- he was an employee as well.
- 14 Q An employee of Needham Excavating?
- 15 A Yes.
- 16 Q And did you see him on job sites?
- 17 A Yes.
- 18 Q How often?
- 19 A It wouldn't have been every day, but a few times a
- 20 month. You know, here and there.
- 21 Q Were there any weeks where you might have seen him
- 22 three or four days in a single week?
- 23 A Yeah. I might have. You know, there might have been a
- 24 job where I was there for five days in a row. I bounce
- 25 around a lot.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q When you were working with Adam, did Needham Excavating
2 have a cell phone policy?

3 A Yes.

4 Q And what was that policy?

5 A You can't talk on your phone while you're operating.

6 Q And did you violate that policy?

7 A Did I?

8 Q Yes.

9 A I'm sure I have. I typically will shut the machine
10 down and talk on the phone or I won't operate it.

11 Q Did you ever see Adam talking on the phone while
12 operating heavy equipment?

13 A Yes.

14 Q Approximately how often?

15 A Very often. Probably every day.

16 Q Every day meaning every day you were on the same job
17 with him?

18 A Correct.

19 Q And can you describe how he held the phone?

20 A With his shoulder, you know. Prop it up on his
21 shoulder so he could still run the controls.

22 MR. NIEW: Let the record show that the witness tilted
23 his head to one side and pointed to his ear and shoulder
24 area.

25 Q BY MR. NIEW: Is that correct?

1 A Yes.

2 Q Now when Adam was operating the heavy equipment with
3 the phone being on, do you know who he was talking to?

4 A No. I think he talked to his wife a lot.

5 JUDGE STECKLER: How do you know that?

6 THE WITNESS: How do I know that?

7 JUDGE STECKLER: Yes, sir.

8 THE WITNESS: I guess I don't. I just kind of assumed
9 because we always kind of joke like, hey, what's he talking
10 about with his wife when he gets home if they stay on the
11 phone together all day.

12 JUDGE STECKLER: Okay. Thank you.

13 Q BY MR. NIEW: Did you ever see Adam with ear pods
14 while he was talking on the phone and operating equipment?

15 A I know he had some, but I didn't hardly ever see him
16 wearing them.

17 Q Well, specifically, do you remember ever seeing him
18 wearing --

19 A Ever seeing him? Yes.

20 MR. NIEW: Excuse me, Your Honor. I need a drink.

21 JUDGE STECKLER: Okay. We all could all use a drink,
22 right? Later, later. Let's make sure Mr. Niew is fully
23 composed after that. Mr. Macumber, you didn't think you
24 were going to get a little standup comedy while you were
25 sitting here, did you?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: I didn't, but I appreciate it.

2 JUDGE STECKLER: Or sit-down comedy as the case may be
3 in these cases.

4 THE WITNESS: Yeah.

5 JUDGE STECKLER: I can sympathize with Mr. Niew. I
6 usually carry throat lozenges for hearings but can't do it
7 in here. Mr. Niew, let us know when you're ready to
8 continue.

9 MR. NIEW: Let me get a little more water for one
10 second, please.

11 JUDGE STECKLER: Okay. Let's go off the record.

12 *(Off the record)*

13 JUDGE STECKLER: Back on the record

14 Q BY MR. NIEW: Now I want to clarify. Did you ever see
15 Adam operating heavy equipment talking on the phone with ear
16 pods in?

17 MS. LAROSE: Objection.

18 A BY THE WITNESS: Rarely, but yes.

19 MS. LAROSE: Objection.

20 JUDGE STECKLER: What was the objection, Ms. LaRose?

21 MS. LAROSE: He's answered this question.

22 JUDGE STECKLER: Okay. I think it might have gotten
23 garbled, so we'll take it. But Mr. Macumber, I do have a
24 question because I'm not a heavy equipment operator. While
25 you're working on equipment, do you wear any ear protection?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: You probably should if it's really loud,
2 but they're not that loud. You don't really need it.
3 Certain machines you might, you know. An older dozer you
4 would want hearing protection. But the new machines aren't
5 terribly loud.

6 JUDGE STECKLER: Okay. If you're wearing ear
7 protection, can you still cock your head and hold a phone in
8 place?

9 THE WITNESS: Oh, yeah. I mean if you just had plugs
10 in, yeah.

11 JUDGE STECKLER: Okay.

12 THE WITNESS: If you had earmuffs, then no.

13 JUDGE STECKLER: Okay. So the usual big -- the ones
14 that we normally think of are the big pieces that make you
15 look like Princess Leia in Star Wars.

16 THE WITNESS: Yeah.

17 JUDGE STECKLER: But you can't use the phone with your
18 hand with it cocked up to your ear.

19 THE WITNESS: No.

20 JUDGE STECKLER: Is that what I'm understanding?

21 THE WITNESS: Yeah.

22 JUDGE STECKLER: Okay. Thank you. You can continue,
23 Mr. Niew.

24 Q BY MR. NIEW: Did you personally ask Adam ever to get
25 off the phone?

1 A No.

2 Q What is your normal starting time?

3 A It's 7:00 a.m.

4 Q Would that be true of all the other employees as far as
5 you know?

6 A Yes.

7 Q Did you ever see Adam come in late after 7:00 a.m.?

8 A I'm sure I have. I couldn't give you a specific date
9 or a job or anything.

10 Q Were there any times where you would see him come in
11 late two or three times in a single week?

12 MS. LAROSE: Objection.

13 JUDGE STECKLER: What's the objection?

14 MS. LAROSE: Asked and answered, Your Honor.

15 JUDGE STECKLER: I think given his answer, Mr. Niew,
16 I'm going to have sustain the objection.

17 Q BY MR. NIEW: Do you remember Adam coming to work with
18 a Local 150 logoed sweatshirt or T-shirt?

19 A Yeah. Yes.

20 Q Do you remember approximately when that was?

21 A Oh, it would have been in April of '16, April or May of
22 '16.

23 Q Could it have been April or May of '19?

24 A Oh, sorry. Yes. Wrong date.

25 Q And also did Adam have a Local 150 sticker on the back

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 of his truck?

2 A Yes.

3 Q And approximately when did that show up?

4 A Around the same time.

5 Q Did you ever hear anybody from Needham management
6 complaining about either the sweatshirt or the sticker in
7 the truck?

8 A No.

9 Q Who do you consider the management of Needham
10 Excavating?

11 A Nick Needham.

12 Q Anyone else?

13 A Curt, Dan, and Joe.

14 Q Curt. When you say Curt, Curt McKinley?

15 A Yes.

16 MR. NIEW: I'm sorry, Judge. I got lost off the
17 screen. I don't know what I did.

18 JUDGE STECKLER: Mr. Wright, can you give him a hand
19 there, please, or Mr. Needham as the case may be? And Mr.
20 Needham gets brownie points for possibly entering this
21 second career.

22 Okay. Are you back, Mr. Niew?

23 MR. NIEW: I am back.

24 JUDGE STECKLER: Okay. Good news. I'll let you
25 continue, please.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 Q BY MR. NIEW: Did Adam ever speak to you about Local
2 150 and an organizing campaign?
- 3 A Probably yes. Very briefly.
- 4 Q Was it ever on company time?
- 5 A Yes.
- 6 Q Do you remember what projects it might have been?
- 7 A It would have been Forest Grove School.
- 8 Q And when was that job?
- 9 A In that April of '19, April/May '19.
- 10 Q Do you remember a Pleasant Valley School project?
- 11 A That's probably the same -- that's the same area. It
12 was that job.
- 13 Q And did you ever see any union reps on the job talking
14 to Adam?
- 15 A No. Not that -- no. I don't remember. I don't think
16 so.
- 17 Q Do you get the pretty much standard raises?
- 18 A Yes.
- 19 Q When do you normally get a raise?
- 20 A June 1st typically.
- 21 Q And how long has that been going on?
- 22 A I don't know. I can't -- I don't remember. Probably
23 something I should pay attention to.
- 24 Q Do you know a Tim Hamann?
- 25 A Yes.

- 1 Q And who is he?
- 2 A He has worked here a few times. I don't know if he's
- 3 permanent, but I see him.
- 4 Q And when you see him, what was Tim Hamann doing?
- 5 A Running an excavator.
- 6 Q Do you remember what job and when?
- 7 A I don't know when, but it would have been at the Dolin
- 8 job.
- 9 Q Do you know who Clint McKinley is?
- 10 A Yes.
- 11 Q Who is he?
- 12 A He is an operator.
- 13 Q And did you ever observe him on job sites?
- 14 A Yeah.
- 15 Q And you said he was an operator. Was he operating
- 16 heavy equipment?
- 17 A Yes.
- 18 Q Did Clint McKinley to your knowledge have any
- 19 supervisory authority such as hire, fire, demote, suspend,
- 20 or discipline?
- 21 A No.
- 22 Q You laughed a little bit. What is that?
- 23 A He's just another operator.
- 24 Q Who is Kenny McAdoo?
- 25 A A laborer.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 Q And did you work with him on a regular basis?
- 2 A Yes.
- 3 Q And do you remember approximately when you have seen
- 4 him on job sites?
- 5 A I don't know when he got hired, but he worked on the
- 6 crushing site with me for probably three years.
- 7 Q After the crushing site, did you ever seen Kenny McAdoo
- 8 work as an operator?
- 9 A Yeah. He's run a backhoe, a skid loader, and a roller.
- 10 Q Did he ever run an excavator to your knowledge?
- 11 A Yes.
- 12 Q Do you know Brett Needham?
- 13 A Rick Needham?
- 14 Q I'm sorry. Rick Needham.
- 15 A Yes.
- 16 Q And who is he?
- 17 A He's a truck driver.
- 18 Q Did you ever see him operating equipment?
- 19 A Yes, an excavator.
- 20 Q How about an Ag tractor?
- 21 A Oh, yep. And he's ran that quite a bit.
- 22 Q How about a roller?
- 23 A Yep.
- 24 Q How about a scraper?
- 25 A Yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q How often would you see Rick operating heavy equipment?

2 A We've been on a few jobs together. Two summers ago we
3 were on a scraper job for almost the whole job together. So
4 you're on a scraper every day for a few months for sure at
5 that job.

6 Q Do you know Bill Bouchard?

7 A Yes.

8 Q And what did he do for the company?

9 A He was one of the --

10 Q What did he do for K & K first?

11 A He was a mechanic.

12 Q And did he ever go on Needham Excavating's payroll as
13 far as you know?

14 A As far as I know, no. I don't know if he did or not.

15 Q Did you ever see him on job sites?

16 A Yes.

17 Q And what did you see him doing on job sites?

18 A Fixing equipment and periodically operating.

19 Q When he operated equipment, can you describe what he
20 would normally do?

21 A I've seen him load trucks and run a roller before.

22 Q Who is Jered Nielsen?

23 A A current mechanic.

24 Q And have you ever seen him work on job sites?

25 A Yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 Q Do you remember approximately when?
- 2 A Any time. Randomly.
- 3 Q And what would Jered Nielsen be doing when you saw him
- 4 on the job sites?
- 5 A Repair equipment.
- 6 Q Did he ever test the equipment?
- 7 A Yes.
- 8 Q And how would he test the equipment?
- 9 A By operating it.
- 10 Q Would he put the equipment under stress?
- 11 A Under stress?
- 12 Q Yes.
- 13 A I guess. I don't know what you mean by that.
- 14 Q Well, would he operate the equipment under simulated
- 15 conditions as a normal operator would?
- 16 A Yes.
- 17 Q And how long would he -- is there a period of time that
- 18 he would operate the equipment?
- 19 A It wouldn't be all day. A few hours.
- 20 Q Do you know Amber Nielsen?
- 21 A Yes.
- 22 Q Have you ever seen her on job sites?
- 23 A Yes.
- 24 Q And do you know what she was doing? When you've seen
- 25 her on job sites, what was she doing?

- 1 A She would be loading her own truck and maybe another
2 truck if it was there at the same time.
- 3 Q And what kind of equipment would she use to load a
4 truck?
- 5 A A wheel loader.
- 6 Q And that's heavy equipment. Would that be correct?
- 7 A Yes, yes.
- 8 Q Do you know a person named Brett Gripp?
- 9 A Yes.
- 10 Q And how did you come to know Brett?
- 11 A He got hired to be our lowboy operator/driver.
- 12 Q Did you ever see him operating heavy equipment on a job
13 site?
- 14 A Yeah. I've seen him in a backhoe before.
- 15 Q How often?
- 16 A Maybe once a week or twice a week.
- 17 Q Did Brett Gripp ever ask you for help when he was on a
18 job site driving a truck?
- 19 A Yes.
- 20 Q Do you recall what he said to you?
- 21 A I've had to help him load and unload equipment before.
- 22 Q Why is that?
- 23 A Because he didn't know how.
- 24 Q How do you know that?
- 25 A Because he told me. He told me he didn't know how to

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 tie down a roller before, so I had to show him the tie down
2 points.

3 Q Now did you ever hear anybody from Needham management
4 make any threats to close down the shop?

5 A No.

6 Q Did you hear anybody from Needham management tell
7 someone that if they vote for the union that bad things
8 would happen?

9 A No.

10 Q Anything like that?

11 A No.

12 Q Did you ever hear management threaten any employees in
13 any way for voting for or against the union?

14 A No.

15 Q Do you know Jesse Tyler?

16 A Yes.

17 Q And who is he?

18 A He was an operator.

19 Q For Needham Excavating?

20 A Correct.

21 Q And did he ever contact you --

22 A Yes.

23 Q -- after he left Needham Excavating?

24 A Yes,

25 Q For what purpose?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A To try to see which way I was going to vote in the
2 election.

3 Q Did he say he was a representative of Local 150 or --

4 A No.

5 Q After Brett Gripp left the employer of Needham
6 Excavating, did he ever contact you again?

7 A No.

8 Q Same question as to Adam. Did he ever contact you?

9 A No.

10 MR. NIEW: Your Honor, may I have two minutes to look
11 at my notes and talk to my co-counsel?

12 JUDGE STECKLER: Yes. Let's go off the record.

13 *(Off the record)*

14 JUDGE STECKLER: We're back on the record.

15 MR. NIEW: Your Honor, I have no further questions of
16 this witness.

17 JUDGE STECKLER: Mr. Williams?

18 MR. WILLIAMS: Yes, just a couple of quick questions.

19 CROSS-EXAMINATION

20 Q BY MR. WILLIAMS: Mr. Macumber, you testified you've
21 seen Adam on a cell phone while he was operating equipment?

22 A Yes.

23 Q During your employment with Needham Excavating, Inc.,
24 have you seen other operators on cell phones while they were
25 operating equipment as well?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yes.

2 Q And how many employees have you seen or operators?

3 A I don't have an exact number. A few including myself.

4 Q Okay.

5 JUDGE STECKLER: Mr. Macumber, do you still do that?

6 THE WITNESS: No.

7 JUDGE STECKLER: When did you stop?

8 THE WITNESS: When it became an issue, when they
9 started letting us know that it was a policy to not do it.

10 JUDGE STECKLER: And when was that?

11 THE WITNESS: I don't know exactly a date.

12 JUDGE STECKLER: Was it after Mr. VanOpDorp left?

13 THE WITNESS: No, it was before that.

14 JUDGE STECKLER: Okay. So you were doing it up until
15 that time and then you stopped?

16 THE WITNESS: Correct.

17 JUDGE STECKLER: Okay. You may continue, Mr.
18 Williams.

19 Q BY MR. WILLIAMS: Do employees talk to each other
20 during working time?

21 A Yes.

22 Q What do employees talk about?

23 A Anything. The job at hand to what we did over the
24 weekend.

25 Q Do you talk about sports?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 A Yeah.
- 2 Q Do you talk about hunting?
- 3 A Correct.
- 4 Q Do you talk about driving motorcycles?
- 5 A Sure.
- 6 Q Do you talk about trap shooting?
- 7 A Yeah.
- 8 Q Okay. Now you said Mr. Gripp asked you to tie down a
9 roller?
- 10 A Yes.
- 11 Q On one occasion?
- 12 A Yes.
- 13 Q Do you remember when that was?
- 14 A I don't. We were on Devils Glen Road. I know that
15 much or in that area.
- 16 Q Okay. Is that the only time Mr. Gripp has asked you
17 for assistance?
- 18 A Yes.
- 19 Q Okay. Did you tell management, anyone in management,
20 that Mr. Gripp had asked you to tie down a roller?
- 21 A I don't know. Possibly.
- 22 Q But you don't recall?
- 23 A No, I don't recall.
- 24 Q Okay.
- 25 MR. WILLIAMS: No further questions, Your Honor.

1 JUDGE STECKLER: Ms. LaRose?

2 MS. LAROSE: Just a few, Your Honor.

3 CROSS-EXAMINATION

4 Q BY MS. LAROSE: Mr. Macumber, you're a smoker, right?

5 A Yes.

6 Q We're also smokers, so we'll confess to each other. It
7 would be fair to say that you smoke over a pack a day. Is
8 that right?

9 A Yeah.

10 Q And you're not doing all of that smoking between 5:00
11 p.m. and before you go to bed, right?

12 A That's correct.

13 Q A couple of questions about the crusher.

14 A Okay.

15 Q The crusher is not at the shop, right?

16 A No. It never was, no.

17 Q Yeah. And if you're operating the crusher or you're,
18 you know, loading out from the crusher, you have to be at
19 the crusher, right?

20 A Yes.

21 Q Okay. And there really is no crusher related tasks
22 that you could do at the shop, right?

23 A Unless it was being repaired over the wintertime.

24 Q Okay. So for the most part though, if you're working
25 at the crusher, you're not anywhere near the shop, right?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A No.

2 Q The crusher was called -- the crushing operation was
3 called Reds Crushing, right?

4 A Yes.

5 Q Okay. And it has been called Reds Crushing for what,
6 10 or 15 years or so? Is that right?

7 A Probably closer to 8 or 9.

8 Q Okay. Rick Needham -- you testified about a scraper
9 job every day for a few months. What job was that?

10 A I think it was called Windmillers in Bettendorf.

11 Q And when was this?

12 A I want to say two summers ago.

13 Q So when you operate a piece of heavy equipment, you're
14 supposed to put -- you know, on your timesheet you're
15 supposed to log the piece of heavy equipment, right?

16 A Yes.

17 Q The machine number gets written on the timecards?

18 A Yes.

19 Q Okay. And so if Rick in fact worked on the scraper, he
20 should have put that on his timecard, right?

21 A Yes.

22 MR. NIEW: Objection. Foundation.

23 Q BY MS. LAROSE: And so I would expect --

24 JUDGE STECKLER: Just a second. Mr. Macumber, how do
25 you know that just to get it clear on the record?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: How do I know that we need to put the
2 equipment down on our timecards?

3 JUDGE STECKLER: Yes, sir.

4 THE WITNESS: Because that's just what we do. That's
5 how -- I think that's how the office can know what to bill
6 or how many hours to bill.

7 JUDGE STECKLER: And you've been doing that yourself
8 ever since you've been employed. Is that correct?

9 THE WITNESS: Correct.

10 JUDGE STECKLER: Okay, Ms. LaRose, you may continue.

11 MS. LAROSE: Thank you, Your Honor.

12 Q BY MS. LAROSE: I would expect to see an indication of
13 an equipment number consistent with a scraper for several
14 months for Mr. Rick Needham if in fact he were running the
15 scraper, right?

16 MR. NIEW: Objection. Foundation.

17 JUDGE STECKLER: I think she has established
18 foundation. Go ahead and answer, Mr. Macumber.

19 A BY THE WITNESS: Yes.

20 Q Thank you. Similarly, if Jered Nielsen had been
21 running equipment for several hours as you testified -- I'm
22 sorry, for a few hours as you testified, I would expect to
23 see that on his timecard as well, correct?

24 A Yes.

25 MR. NIEW: Same objection. Foundation.

1 JUDGE STECKLER: I think as an employee he would know
2 what somebody would be doing in the field with their
3 timecards.

4 MR. NIEW: But he would not know what he would put
5 down on the timecard and what he's been told. Those are two
6 different questions.

7 JUDGE STECKLER: Mr. Macumber, what is your practice
8 of putting down on timecards?

9 THE WITNESS: Job performed, equipment ran, and hours.

10 JUDGE STECKLER: To your knowledge, is that required
11 of everybody who does heavy operating equipment?

12 THE WITNESS: That's -- yeah, to my knowledge.

13 JUDGE STECKLER: Ms. LaRose, you may continue.

14 MS. LAROSE: Thank you, Your Honor.

15 Q BY MS. LAROSE: You stated that Bill Bouchard loaded
16 trucks and ran a roller. You would give the same answer for
17 him, correct? If he ran -- if he loaded trucks or ran a
18 roller for any appreciable time, you would expect that to
19 appear on his timecard, right?

20 A Yes.

21 Q And if I told you that at least in a period around the
22 election that I was unable to locate any time records that
23 showed Bill or Jered running equipment, that would be
24 because they were not in fact running equipment, right?

25 MR. NIEW: Argumentative. Objection.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: I'm going to allow the answer.

2 A BY THE WITNESS: No, they ran it. They just must not
3 have written it down.

4 Q Okay.

5 JUDGE STECKLER: Let me throw in a question here on
6 that topic.

7 EXAMINATION BY COURT

8 JUDGE STECKLER: If a mechanic comes out to the field
9 and repairs something, you mentioned that they try it out to
10 make sure that it's working correctly. Is that correct?

11 THE WITNESS: Yes.

12 JUDGE STECKLER: How often do they do that?

13 THE WITNESS: Every time they work on something.

14 JUDGE STECKLER: How often have you observed them out
15 in the field?

16 THE WITNESS: A lot. I guess I don't know a number to
17 tell you. It happens often. We run the equipment a lot, so
18 it breaks a lot.

19 JUDGE STECKLER: So when they come out and test it,
20 how long are they testing it for?

21 THE WITNESS: They could be there for a few hours at
22 least.

23 JUDGE STECKLER: To test it?

24 THE WITNESS: To fix and test it. They might --

25 JUDGE STECKLER: Okay. So how long -- so what type of

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 repairs have you observed them doing?

2 THE WITNESS: Let's use a busted hose for an example,
3 a hydraulic hose. They put a new hose on and then run it
4 and check for leaks.

5 JUDGE STECKLER: Okay. How long does that take
6 normally?

7 THE WITNESS: A couple of hours. Two to three hours.

8 JUDGE STECKLER: And then the testing period after
9 that, how long does that usually take?

10 THE WITNESS: A half-hour maybe.

11 JUDGE STECKLER: What are you doing if that was your
12 machine that has the busted hose?

13 THE WITNESS: You mean what would I do? I'd call a
14 mechanic.

15 JUDGE STECKLER: No, I mean after -- while they're
16 there fixing it, what do you have to do?

17 THE WITNESS: I would typically give them a hand.

18 JUDGE STECKLER: Okay. So at the time it's being
19 tested, who is driving the equipment?

20 THE WITNESS: It could be the mechanic; it could be
21 me. If there's other work to do, I'll go do it, and then
22 they'll do everything themselves and then run the machine.

23 JUDGE STECKLER: Okay. If they've done the repair
24 correctly, how long does it take to test something like a
25 busted hose?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: A half-hour maximum.

2 JUDGE STECKLER: Okay. Ms. LaRose, you may continue.

3 MS. LAROSE: I have no further questions, Your Honor.

4 JUDGE STECKLER: Mr. Williams?

5 MR. WILLIAMS: No. No questions, Your Honor.

6 JUDGE STECKLER: Mr. Niew, do you have any redirect?

7 MR. NIEW: I do.

8 REDIRECT EXAMINATION

9 Q BY MR. NIEW: Do you know what Rick Needham was told
10 with respect to putting time on timecards?

11 A No.

12 Q Do you know what Bill Bouchard was told with respect to
13 putting time on timecards specifically while operating a
14 machine?

15 A No.

16 Q Do you know that for anybody?

17 A No.

18 MR. NIEW: No further questions.

19 JUDGE STECKLER: Mr. Macumber, I do have a few
20 questions.

21 EXAMINATION BY COURT

22 JUDGE STECKLER: When did you see Amber Nielsen loading
23 and unloading?

24 THE WITNESS: It would be at that crushing site.

25 JUDGE STECKLER: Okay. And about how long ago was

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 that?

2 THE WITNESS: Three to four years ago. And, you know,
3 probably within a year's time.

4 JUDGE STECKLER: Within the last year?

5 THE WITNESS: Oh, no, no. I'm sorry. Three to four
6 years ago for about a year.

7 JUDGE STECKLER: Okay. So it's been quite some time
8 then?

9 THE WITNESS: Yeah. If I wasn't there, she could
10 basically do what I would do if I was there.

11 JUDGE STECKLER: Okay. Did you attend any meetings in
12 which just about all the employees were there prior to the
13 election?

14 THE WITNESS: Yes.

15 JUDGE STECKLER: It was conducted by management?

16 THE WITNESS: Yes.

17 JUDGE STECKLER: What, if anything, do you recall
18 about that meeting?

19 THE WITNESS: Not much. It was -- I couldn't even
20 tell you what it was really about. I think it was about our
21 rights as employees or something along those lines.

22 JUDGE STECKLER: Do you remember how long it was?

23 THE WITNESS: The meeting itself I want to say
24 anywhere from an hour to two hours or somewhere in there.

25 JUDGE STECKLER: Okay. Do you remember anybody who

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 spoke at the meeting?

2 THE WITNESS: I can't remember any specifics, but
3 yeah, there was some talk. Of course there was talking.

4 JUDGE STECKLER: Okay. Do you remember where it was
5 at?

6 THE WITNESS: Dan Needham's house.

7 JUDGE STECKLER: So you don't recall anything that was
8 particularly said at this meeting?

9 THE WITNESS: No, nothing that sticks out, no. Kind
10 of boring really.

11 JUDGE STECKLER: Okay. I'll take that as a no, I
12 don't remember anything.

13 THE WITNESS: Yeah.

14 JUDGE STECKLER: Mr. Niew, do you have additional
15 questions?

16 MR. NIEW: Yes.

17 REDIRECT EXAMINATION

18 Q BY MR. NIEW: Other than the crushing site, did you
19 ever see Amber Nielsen at Needham Excavating job sites?

20 A Yes.

21 Q And what did you see her doing at Needham Excavating
22 job sites?

23 A Driving trucks.

24 Q Anything else?

25 A No.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Did you see her loading her own truck?

2 MS. LAROSE: Asked and answered.

3 JUDGE STECKLER: Sustained.

4 Q BY MR. NIEW: How often did you see -- I'll withdraw
5 that question.

6 When did you see Amber at Needham construction job
7 sites?

8 A When?

9 Q Yes.

10 JUDGE STECKLER: Wait a minute, Mr. Niew. Isn't that
11 what I just asked?

12 MR. NIEW: If it was, I didn't hear it.

13 JUDGE STECKLER: Somebody stop me if I'm incorrect,
14 but I thought I asked when he saw Amber --

15 MR. CONNOLLY: You are correct, Your Honor. It was
16 when did you see Amber loading or unloading.

17 JUDGE STECKLER: Okay. Thank you. Go ahead, Mr.
18 Niew. After that question.

19 MR. NIEW: I have no further questions.

20 JUDGE STECKLER: Mr. Williams?

21 MR. WILLIAMS: No further questions, Your Honor.

22 JUDGE STECKLER: Ms. LaRose?

23 MS. LAROSE: No further questions, Your Honor.

24 JUDGE STECKLER: Mr. Macumber, you're about to be
25 excused as a witness. Thank you for coming in. The hearing

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 may be going on, but we don't know for how long yet
2 depending on people's schedules. But in the meantime,
3 please do not discuss your testimony with anyone. I'm sure
4 you'll hear at the job sites when it's over, but in the
5 meantime, don't discuss, okay?

6 THE WITNESS: Okay.

7 JUDGE STECKLER: Thank you.

8 *(Witness excused)*

9 We'll go off the record while Respondent gets his or
10 her next witness. Off the record.

11 *(Off the record)*

12 JUDGE STECKLER: On the record. Respondent may call
13 his next witness.

14 MR. NIEW: The next witness is Amber Nielsen.

15 (Whereupon,

16 **AMBER NIELSEN**

17 having been sworn/affirmed, was called as a witness herein
18 via Zoom, and was examined and testified as follows.)

19 JUDGE STECKLER: Please state your name and spell it
20 for the record.

21 THE WITNESS: Amber Nielsen, A-m-b-e-r, N-i-e-l-s-e-n.

22 JUDGE STECKLER: Ms. Nielsen, have you discussed your
23 testimony with anybody?

24 THE WITNESS: No.

25 JUDGE STECKLER: Okay. Have you -- are you in a room

1 by yourself?

2 THE WITNESS: Yes.

3 JUDGE STECKLER: Door open or shut?

4 THE WITNESS: It's shut.

5 JUDGE STECKLER: Do you have any papers in front of
6 you?

7 THE WITNESS: No, Ma'am.

8 JUDGE STECKLER: Okay. You may proceed, Mr. Niew.

9 DIRECT EXAMINATION

10 Q BY MR. NIEW: May I call you Amber to make this go
11 faster?

12 A Yes.

13 Q Who are you currently employed by?

14 A Needham Excavating.

15 Q And do you have a job title?

16 A Shop coordinator.

17 Q And what are your duties as shop coordinator?

18 A To line up the work for the gentlemen in the shop and
19 get parts and make sure we have everything they need to be
20 able to fix the equipment.

21 Q And how long have you held the position of shop
22 coordinator?

23 A Um, two years now.

24 Q So that would be back through 2018?

25 A I think it was November 2018 I started.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q As shop coordinator, do you have the authority to hire,
2 fire, or discipline?

3 A No.

4 Q Have you ever done that?

5 A No.

6 Q At Needham Excavating for shop employees, who has that
7 authority?

8 A Curt, Joe, Nick, and Boo.

9 Q Curt would be McKinley?

10 A Yes.

11 Q And Joe would be -- Joe and Nick are Needham?

12 A Needham.

13 Q And Boo is Dan Needham?

14 A Dan Needham. I'm sorry, yes.

15 Q Now when did you first start working for Needham
16 Excavating?

17 A I don't remember the day. It was in March of 2015.

18 Q And what were you to do when you worked for Needham
19 Excavating in March of that year?

20 A I was hired to drive a truck.

21 Q And either before that or after that, did you work for
22 a company called K & K?

23 A Yes.

24 Q And what did you do for K & K?

25 A Drove a truck.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Were your duties working for K & K and/or Needham back
2 two years ago or three years ago were they pretty much the
3 same thing?

4 A Yes.

5 Q Now when you worked for either K & K or Needham, did
6 you have occasion to go to job sites?

7 A Every day I worked, yes.

8 Q When you went to job sites, was there a typical day on
9 what you would do there?

10 A Every day was different, but it was always taking
11 material to or from a job site.

12 Q Now when you say taking material to and from a job
13 site, did you operate any heavy equipment while you were on
14 a job site?

15 MS. LAROSE: Objection.

16 JUDGE STECKLER: What's the objection, Ms. LaRose?

17 MS. LAROSE: Leading.

18 JUDGE STECKLER: Sustained.

19 Q BY MR. NIEW: What did you do with respect to, if
20 anything, as to heavy equipment operation at job sites.

21 A When I had to load a truck, I loaded a truck. When I
22 had to push material so we could keep moving, I would use
23 whatever was there to push material to keep moving.

24 Q And what kind of heavy equipment did you use?

25 A It depended on what was there. If it was a wheel

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 loader, I used a wheel loader. If it was skid loader, I
2 used a skid loader. If it was a loader backhoe, I used a
3 loader backhoe.

4 Q At the times that you operated heavy equipment at job
5 sites, did you record your heavy equipment working time on
6 timecards?

7 A No.

8 Q Why not?

9 A I was never told to.

10 Q Now did you ever do any other work for Needham besides
11 operating equipment or driving a truck?

12 A I worked in the shop.

13 Q Okay. How about doing clean up? Did you ever do that?

14 MS. LAROSE: Objection.

15 JUDGE STECKLER: Leading again?

16 MS. LAROSE: Yes, and asked and answered.

17 JUDGE STECKLER: Ms. Nielsen, can you tell us what you
18 did in the shop?

19 THE WITNESS: What I do in the shop?

20 JUDGE STECKLER: What you did back then like in
21 2018/2019.

22 THE WITNESS: When I was in the shop, I would sweep
23 the floors, I would scrub doors, I would do anything that
24 needed to be done. If I didn't have work in the field
25 driving a truck, then I'd get hours by doing whatever I

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 needed to do to help out.

2 JUDGE STECKLER: In your job, do you write the
3 schedules for the mechanics?

4 THE WITNESS: I don't -- no, I don't write the
5 schedules.

6 JUDGE STECKLER: Are the mechanics scheduled on a
7 regular basis like a Monday through Friday?

8 THE WITNESS: They don't really have a set schedule,
9 Ma'am. The start time is 7:00, but we're done when we're
10 done with what needs to be done for the day.

11 JUDGE STECKLER: But I mean on a weekly basis, they
12 just show up Monday through Friday? Is that correct?

13 THE WITNESS: Yes.

14 JUDGE STECKLER: Who gives overtime?

15 THE WITNESS: Nobody gives overtime. If we have to
16 work overtime -- I guess it's never been discussed.

17 JUDGE STECKLER: Okay.

18 THE WITNESS: Overtime isn't a discussed thing.

19 JUDGE STECKLER: Who grants vacation requests?

20 THE WITNESS: Usually if we have vacation or time we
21 need off, we talk to Curt or Nick or Joe.

22 JUDGE STECKLER: Okay. Same thing with personal time?

23 THE WITNESS: Yes.

24 JUDGE STECKLER: Sick time? Who do you and the
25 mechanics call in to?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: Curt.

2 JUDGE STECKLER: And the mechanics as well?

3 THE WITNESS: Yes.

4 JUDGE STECKLER: Okay. You may continue, Mr. Niew.

5 Q BY MR. NIEW: Was there a time where you went back and
6 forth from Needham and K & K and back again to K & K?

7 A Yes.

8 Q And approximately when was that?

9 A I don't really remember.

10 Q Do you remember what the reason was for the transfers
11 back and forth?

12 A I know Nick was going through a divorce and they had
13 talked about getting rid of K & K, but I don't remember when
14 that was.

15 Q Now when you worked for K & K, who were the repair
16 persons?

17 A Jered and Bill Bouchard. Jered Nielsen and Bill
18 Bouchard.

19 Q And Jered is your husband?

20 A Yes, sir.

21 Q Okay. Did you have occasion to see Jered and Bill
22 Bouchard on job sites?

23 A Regularly, yes.

24 Q And can you describe what you saw -- first, what did
25 you see Jered doing?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Repairing equipment. Bringing his service truck to the
2 job site, repairing the equipment, and then running it to
3 make sure it was repaired.

4 Q And the running of the equipment by either Bill
5 Bouchard or Jered, what would they typically do?

6 A It just depended on what had been repaired. I guess
7 every time was different. They would run the machine to
8 test to make sure their repair was done properly. They
9 would use it more if they had to fix a track or they'd do
10 something, you know. I guess it just depended on what they
11 repaired.

12 Q Now your husband, Jered, does he call in your time to
13 you?

14 A Does he call in my time to me?

15 Q I'm sorry. I withdraw the question. Does he call in
16 his time to you?

17 A No. They give me their timecards at the end of the
18 day, and I turn them into the office.

19 Q When you say turn them into the office, that would be -
20 -

21 A Casie.

22 Q Casie. That would be in Needham's office?

23 A Yes.

24 Q Now when K & K was in existence, did NEI management
25 treat K & K employees and Needham employees any differently?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A No.

2 Q Could you tell any difference between the two
3 companies?

4 A No. It was all one company.

5 MS. LAROSE: Objection to foundation and objection to
6 the leading.

7 EXAMINATION BY COURT

8 JUDGE STECKLER: Ms. Nielsen, can you explain how you
9 came to these conclusions other than Mr. Niew telling you or
10 asking you that way?

11 THE WITNESS: The businesses were always owned by the
12 Needhams. I mean they were in the same building, owned by
13 the same people. The only thing that was different was the
14 name of the company, I guess. To me it was always one
15 company. When people asked me who I worked for, even when I
16 technically worked for K & K, I told them I worked for
17 Needham. I guess that's the best description I can give
18 you.

19 JUDGE STECKLER: Okay. So when you say you worked for
20 Needham, you were running a truck for them for quite some
21 time, correct?

22 THE WITNESS: Yes, Ma'am.

23 JUDGE STECKLER: And you went back and forth sometimes
24 working for both entities, correct?

25 THE WITNESS: Yes, Ma'am.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: When you worked for K & K, what type
2 of timecard did you fill out?

3 THE WITNESS: It's been awhile ago. It was a Needham
4 timecard. Well, I don't even remember. Was it a Needham
5 timecard? I really don't remember.

6 JUDGE STECKLER: Okay. So you don't know what type of
7 timecard you --

8 THE WITNESS: It was a form, but I don't remember if
9 it said K & K Repair or not.

10 JUDGE STECKLER: When you got paid, did you get direct
11 deposit?

12 THE WITNESS: Yes, Ma'am.

13 JUDGE STECKLER: When it hit your pay account, did it
14 differentiate between K & K and Needham at any time?

15 THE WITNESS: Yes, Ma'am, it did.

16 JUDGE STECKLER: Okay. Do you know what that stopped?
17 Did it continue for awhile or did it ever stop?

18 THE WITNESS: I don't remember.

19 JUDGE STECKLER: Okay. You mentioned -- I might as
20 well get all my questions real quick. You mentioned that
21 you observed Jered running equipment and repairing
22 equipment, and the running was to ensure repair. Since you
23 gathered the timecards, what if anything did you notice on
24 their timecards that reflected that they operated equipment?

25 THE WITNESS: You mean when it was K & K Repair or in

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 the last two years since I've been the shop coordinator?

2 JUDGE STECKLER: Well, since you become shop
3 coordinator in November 2018, so let's talk about November
4 2018 to July 2019.

5 THE WITNESS: Okay.

6 JUDGE STECKLER: What if anything changed there?
7 Anything? Did they start recording their time for operating
8 equipment?

9 THE WITNESS: They would write down the job they went
10 to and the machine they repaired.

11 JUDGE STECKLER: Okay.

12 THE WITNESS: So they never -- they didn't write
13 operated machine. They would write that in their work order
14 like I put together, but --

15 JUDGE STECKLER: So they weren't billing necessarily
16 correctly then?

17 THE WITNESS: Bill correctly for what?

18 JUDGE STECKLER: For the time that they operated the
19 machine.

20 THE WITNESS: I couldn't answer that because I don't
21 know anything about the billing side of that.

22 JUDGE STECKLER: Okay. So all you -- but you saw on
23 the timecards what they wrote down.

24 THE WITNESS: Yes.

25 JUDGE STECKLER: Which machine --

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: And where they went to repair it.

2 JUDGE STECKLER: Okay. And the length of time they
3 spent repairing that machine?

4 THE WITNESS: Yes.

5 JUDGE STECKLER: Did that include travel time back and
6 forth from the shop?

7 THE WITNESS: Yes.

8 JUDGE STECKLER: And when you worked on the sites
9 driving trucks, you were loading and unloading trucks. Is
10 that correct?

11 THE WITNESS: Sometimes when I had to.

12 JUDGE STECKLER: Okay. So what were you doing taking
13 the trucks around or driving trucks? Tell me a little more
14 about that job.

15 THE WITNESS: So say on a day I was -- we were doing
16 dirt work of some sort and had to take dirt somewhere.

17 JUDGE STECKLER: Okay.

18 THE WITNESS: I would take my truck to wherever the
19 dirt was, use the machine whatever it was, load dirt on my
20 truck, and take it to the job site.

21 JUDGE STECKLER: Okay. And once you got it to the job
22 site what happened?

23 THE WITNESS: They would tell me where they wanted the
24 dirt, and I would put the dirt there however they needed it
25 there. You know, if they needed me to sit there why they

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 scooped it out and put it somewhere or I just dump it where
2 they needed it.

3 JUDGE STECKLER: Okay. So you were operating the dump
4 truck for the most part, correct?

5 THE WITNESS: Yes.

6 JUDGE STECKLER: Okay. So how much time were you
7 spending on the job site itself once you picked up a load
8 and took it there?

9 THE WITNESS: When I took the load there?

10 JUDGE STECKLER: Yes.

11 THE WITNESS: On a good day, not very long. But if we
12 had things going on, you might have to sit there with a load
13 until they were ready for it. So it changed day by day.

14 JUDGE STECKLER: Okay. Good to know. Mr. Niew, you
15 may continue.

16 Q BY MR. NIEW: In a follow-up, you mentioned the word
17 work order. What is that?

18 A It's what the technicians write telling me what they
19 did to the machine to repair it, what the problem was, what
20 they did to repair it, and they have to keep records of what
21 has been done and fixed and the parts they used to fix it
22 and the hours on the machine and things like that so we can
23 keep records of repairs being done to the machines,

24 Q Now you remember a union election occurring sometime in
25 July of 2019?

1 A Yes.

2 Q Preceding that election, did you ever hear any threats
3 from management about voting for the union?

4 A No.

5 Q Did you ever hear any threats from management for loss
6 of jobs or closing the business if voting for the union?

7 A No, sir.

8 Q Did anybody from management ever offer a perk, a bonus,
9 or anything for voting against the union?

10 A No, sir.

11 Q Did you ever hear any other type of threats by
12 management at all?

13 A No, sir.

14 JUDGE STECKLER: Ms. Nielsen, did anybody ever say our
15 pay would be frozen while negotiations would continue during
16 a union -- if the union won?

17 THE WITNESS: I'm sorry?

18 JUDGE STECKLER: That your pay would be frozen if the
19 union won?

20 THE WITNESS: No. That my pay would be frozen if the
21 union won? Is that what you asked?

22 JUDGE STECKLER: While negotiations were continuing,
23 yes.

24 THE WITNESS: Not that I recall, no.

25 JUDGE STECKLER: You may continue, Mr. Niew.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 Q BY MR. NIEW: Do you know Adam VanOpDorp?
- 2 A I do.
- 3 Q And how do you know him?
- 4 A I worked with him.
- 5 Q On Needham job sites?
- 6 A Yes.
- 7 Q Needham Excavating job sites?
- 8 A Yes.
- 9 Q How often would you see him on a job site?
- 10 A It could be every day if we were working on the same
- 11 job. It could be a couple of times of week.
- 12 Q Did Needham Excavating have a policy about talking on
- 13 the phone while operating heavy equipment?
- 14 A Yes, they did.
- 15 Q And what was the policy?
- 16 A That you shouldn't be talking on your phone while
- 17 you're running machinery
- 18 Q Now the times that you saw Adam on job sites, was he
- 19 ever talking on the phone and operating heavy equipment?
- 20 A Yes.
- 21 A Yes
- 22 Q How often?
- 23 A A lot.
- 24 MS. LAROSE: Objection.
- 25 JUDGE STECKLER: What's the objection, Ms. LaRose?

1 MS. LAROSE: Foundation. I don't think it's clear
2 from this witness' testimony that she even knows. You know
3 what, Your Honor, I'll withdraw the objection.

4 JUDGE STECKLER: Well, how often did you see him doing
5 that, Ms. Nielsen? You said a lot.

6 THE WITNESS: When I was on a job site with Adam, I
7 would see him do it every day regularly.

8 JUDGE STECKLER: Was there a time when he would need
9 to be wearing ear protection?

10 THE WITNESS: He probably should have been wearing ear
11 protection all the time, but he was on his phone.

12 JUDGE STECKLER: Ms. Nielsen, when you were working
13 for K & K, how did you come to know what Nielsen's policies
14 were?

15 THE WITNESS: What Needham's policies were?

16 JUDGE STECKLER: Needham. Sorry.

17 THE WITNESS: Because --

18 JUDGE STECKLER: Their personal policies, Needham's
19 policies.

20 THE WITNESS: We were pretty much the same business,
21 Ma'am. I mean there was really never -- when a group text
22 got sent out saying don't do this, it went to everybody. We
23 were pretty much the same business. So when those messages
24 or policies got sent out, everybody got them whether your
25 paycheck came from K & K Repair or Needham Excavating.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: So -- I'm not going to ask that
2 question. Never mind. Mr. Niew, you may continue.

3 Q BY MR. NIEW: When Adam was speaking on the phone and
4 operating heavy equipment, did he ever have ear pods in his
5 ears?

6 A I can't testify to that.

7 Q You don't know, or you didn't see it?

8 A I don't know.

9 Q Was there a policy -- I withdraw that question. Sorry.
10 Did you ever hear any complaints from any Needham employees
11 that Adam failed to do his job?

12 MR. WILLIAMS: Objection, Your Honor. Calls for
13 hearsay.

14 JUDGE STECKLER: Ms. Nielsen -- well, let me back up,
15 Mr. Niew. Can you get a foundation here?

16 Q BY MR. NIEW: Were you on any job sites where
17 employees of Needham complained to you about Adam?

18 MR. WILLIAMS: Continued objection, Your Honor,

19 JUDGE STECKLER: Mr. Niew, are you saying that these
20 employees were talking to another employee about Mr.
21 VanOpDorp?

22 MR. NIEW: Yes.

23 JUDGE STECKLER: Sustained.

24 THE WITNESS: Can I answer that question?

25 JUDGE STECKLER: No, Ma'am.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: Okay.

2 JUDGE STECKLER: There will be -- don't worry.

3 There's more coming.

4 THE WITNESS: I didn't know where we were going.

5 JUDGE STECKLER: No. When I say sustained, don't
6 answer a question.

7 THE WITNESS: Okay.

8 Q BY MR. NIEW: Do you know Brett Gripp?

9 A I do.

10 Q How do you know him?

11 A They hired him to drive a truck for Needham.

12 Q Do you remember a Moline job where you observed Brett?

13 A I do.

14 Q And do you remember what the job was?

15 A We were working on a church in Moline digging out to do
16 a big addition on it.

17 Q And did you talk to Brett when you saw him driving a
18 truck?

19 A I did.

20 Q And what did you say to him?

21 A I was very unhappy with him because we were driving
22 through a school zone, and he was being very unsafe driving
23 very fast, and I told him I thought that was really bad and
24 that he needed to slow down, and he kind of laughed at me.

25 Q Did you tell anybody from Needham management about the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 incident?

2 A I do believe I said something. I don't remember --

3 Q Do you remember to whom?

4 A I don't remember. I was not happy about the situation.

5 JUDGE STECKLER: Do you know when you reported it, Ms.
6 Nielsen?

7 THE WITNESS: It probably was later that day after we
8 got off.

9 JUDGE STECKLER: You sound a little tentative. Can
10 you be a little more specific?

11 THE WITNESS: You know, I'm not going to testify to an
12 exact time because I can't 100 percent say. I know I said
13 something. Was it that day? I'm not going to testify to
14 that because that wouldn't be truthful. I don't really
15 remember. I know I --

16 JUDGE STECKLER: And I appreciate the clarification.
17 Thank you. Mr. Niew, you may continue.

18 MR. NIEW: May I have two minutes with my co-counsel,
19 please?

20 JUDGE STECKLER: Certainly. Ms. Nielsen, we're going
21 to go off the record for a moment here in just a second.
22 You may get up, stretch, etcetera. Please don't leave the
23 room and then we'll continue with questions, okay?

24 THE WITNESS: Okay.

25 JUDGE STECKLER: Thank you. Off the record, please.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 (Off the record)

2 JUDGE STECKLER: On the record. Mr. Niew?

3 MR. NIEW: No further questions of this witness.

4 JUDGE STECKLER: Mr. Williams?

5 CROSS-EXAMINATION

6 Q BY MR. WILLIAMS: Ms. Nielsen, while you've been
7 employed at Needham Excavating, Inc., have you seen any
8 other operator or operators on a cell phone while they were
9 operating equipment?

10 A Yes.

11 Q Okay. How many have you seen?

12 A How many individuals or how many times?

13 Q Both.

14 A I would be guessing if I answered that question.

15 Q Well, would it be one, two, ten?

16 A I'd say five. I mean and that's a guess.

17 Q Okay.

18 JUDGE STECKLER: Do you see it every day, Ms. Nielsen?

19 THE WITNESS: I wouldn't say every day, but I see it
20 more often than I should.

21 JUDGE STECKLER: Okay. And about how often are you
22 out in the field since November 2018?

23 THE WITNESS: Not -- a couple of times a month.

24 JUDGE STECKLER: General Counsel, you may continue.

25 Q BY MR. WILLIAMS: Okay. You testified that Mr. Brett

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Gripp was I guess speeding through a school zone?

2 A Yes, sir.

3 Q Do you remember when that incident occurred?

4 A It was the fall before -- late summer/early fall of '18
5 I would say.

6 Q Okay. So 2018?

7 A Yes.

8 Q And you said you reported it, the incident?

9 A I did say something about it because I was not happy
10 about the situation.

11 Q Okay. To whom did you report it?

12 A I don't -- I think I told a couple of them. I'm pretty
13 sure I told Curt. I'm not pretty sure, I'm positive I told
14 Curt. And I can't remember if I said something to Joe or
15 not.

16 Q Okay. And when do you think you reported it to any of
17 them?

18 A It was within a few days of the event if not the day.
19 I can't swear to what the day was because I don't -- that
20 has been awhile ago. I don't remember.

21 Q Okay. But it would still be around that fall 2018 time
22 frame?

23 A Yes. It would have been within a few days of the event
24 happening for sure.

25 MR. WILLIAMS: No further questions, Your Honor.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Ms. LaRose?

2 CROSS-EXAMINATION

3 Q BY MS. LAROSE: Ms. Nielsen, in the period preceding
4 the election in 2019, Jered Nielsen was not in ScheduleBase,
5 was he?

6 A I don't know.

7 Q And neither was Bill Bouchard?

8 A I don't know.

9 Q Okay. And you were in ScheduleBase for the periods of
10 time when you were working solely for K & K, right?

11 A I was in ScheduleBase when I worked for K & K? Is that
12 what you're asking?

13 Q I'm asking if basically.

14 A I don't think I was in ScheduleBase when I worked for K
15 & K. I would get my job assignment from Curt.

16 Q Okay. So to that extent, it's not like they're the
17 same company, right, because Needham employees are in
18 ScheduleBase and K & K employees aren't, right?

19 MR. NIEW: Objection. Argumentative.

20 JUDGE STECKLER: You may answer, Ms. Nielsen.

21 A BY THE WITNESS: I guess if that's the definitive line
22 that you're going by then yes.

23 Q I'm just asking you --

24 MS. LAROSE: I'm sorry, Your Honor.

25 EXAMINATION BY COURT

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Ms. Nielsen, let me make sure I'm
2 understanding your answer here. So that was something that
3 was different between K & K and Needham? Is that correct?

4 THE WITNESS: I guess I don't know that. I wasn't in
5 it, and I mean were some people that worked for K & K in
6 ScheduleBase, possibly. I don't know that.

7 JUDGE STECKLER: So when you were doing -- so in the
8 fall of 2018 when you went over to K & K and doing the
9 timecards, you had no idea?

10 THE WITNESS: I was working for -- I don't even
11 remember who I was working for at that point to be very
12 honest. We switched -- I mean -- but I had -- when I went
13 into the shop, I had access to ScheduleBase because I had to
14 see where machines were, who was working, and if there was a
15 problem, I could get hold of whoever was there.

16 JUDGE STECKLER: So you could see everybody that was
17 in ScheduleBase then?

18 THE WITNESS: Yes.

19 JUDGE STECKLER: So you could see whether you were in
20 ScheduleBase?

21 THE WITNESS: I wasn't scheduled in ScheduleBase. I
22 had access to it. Curt ScheduleBased so that I could see
23 where machine were, what jobs were going, and who was where.

24 JUDGE STECKLER: Okay. So when you saw that, did you
25 also notice if any of the other mechanics were in

1 ScheduleBase?

2 THE WITNESS: No, because I didn't pay attention. I
3 guess it was not -- I didn't have a reason to ask them are
4 you in ScheduleBase. I would tell them what needed to be
5 done, what machine was there, and who was there if they had
6 to all somebody for questions.

7 JUDGE STECKLER: So you wouldn't have noticed your
8 husband's name?

9 THE WITNESS: He wouldn't have been scheduled in
10 ScheduleBase.

11 JUDGE STECKLER: Okay.

12 THE WITNESS: That was just for jobs and not repairing
13 machines.

14 JUDGE STECKLER: Okay. Now I understand. So your
15 husband had access to ScheduleBase?

16 THE WITNESS: Yes, he had the same access to
17 ScheduleBase I had, but he wouldn't have been in
18 ScheduleBase for any reason. He's not operating the
19 machines. Well, he did on a job site after he repairs them,
20 but that's it.

21 JUDGE STECKLER: That's it.

22 THE WITNESS: You can't schedule when a machine
23 breaks.

24 JUDGE STECKLER: Okay. I think I understand. Ms.
25 LaRose, you may continue.

1 MS. LAROSE: Thank you, Your Honor.

2 Q BY MS. LAROSE: You testified at some point that you
3 were going back and forth regularly between K & K and
4 Needham Excavating. Do you recall that testimony?

5 A Yes, I do, Ma'am.

6 Q Okay. Would it surprise you if I told you that only
7 happened twice and right before the election?

8 A That wouldn't surprise me. I guess I never really paid
9 that much attention. It wasn't that important to me.

10 Q Okay. Thank you. So it wasn't regular as far as you
11 know?

12 A Not as far as I know.

13 Q Okay.

14 A I don't remember.

15 Q Okay.

16 JUDGE STECKLER: Before you continue, Ms. LaRose, I'm
17 sorry. Would it help you if you saw those documents to
18 refresh your recollection?

19 THE WITNESS: Refresh my recollection about what I
20 guess?

21 JUDGE STECKLER: What Ms. LaRose just asked you about.

22 THE WITNESS: That it only happened twice?

23 JUDGE STECKLER: Yes, yes.

24 THE WITNESS: I believe -- I mean if that's what -- I
25 believe her. I have no problem with that.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Okay. Ms. LaRose, you may continue.

2 MS. LAROSE: Thank you, Your Honor.

3 Q BY MS. LAROSE: Ms. Nielsen, you smoke, right?

4 A I do.

5 Q And you smoke in the shop, right?

6 A I smoked in the shop, yes.

7 Q And so does Bill or so did Bill I should say? I

8 understand he may have retired. Is that right?

9 A Yes.

10 Q Okay. And you smoke in your truck, too, don't you?

11 A I did. Yes, I did.

12 Q Okay. And you smoked in loaders, too, didn't you?

13 A No, I don't smoke in the loaders.

14 Q I'd like to show you a document marked as -- this is

15 part of the timecards that Needham produced to us for you.

16 And I'll just isolate one of them and show it to you.

17 A Okay. It will be just a second.

18 Q See on July 2nd, and I will represent that this is your

19 timecard from July 6th, 2019.

20 A Yes.

21 Q See on July 2nd it says shop work, union meet.

22 A Uh-huh. Is that when we had our election?

23 Q It was not. Do you know what that was about?

24 A I don't honestly.

25 Q Let me ask you, could that have been the day that you

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 went to testify for the company in Peoria?

2 A Oh, I don't -- is that the day it was scheduled?

3 Q It was.

4 A That could possibly be then.

5 Q So the company paid you 9 hours for that day? Is that
6 right?

7 A You'd have to look at their records.

8 Q Okay. Well, let me ask you a couple of questions about
9 this document. I take it this is all your handwriting on
10 this particular document.

11 A Yes, it is.

12 JUDGE STECKLER: Ms. LaRose, what is this document
13 number, please?

14 MS. LAROSE: I'm very sorry, Your Honor. This is from
15 the company's subpoena response. I have not marked this as
16 an exhibit. It is -- I will let everybody know it's item 27
17 in the company's subpoena response. It's page 14. And, you
18 know, I take that back, Your Honor. I think I do have the
19 timecards in evidence. This just doesn't happen to be them.
20 Hold on and I clarify for the record. It's 82. You can
21 find this, Your Honor, on Exhibit 82, but it's probably not
22 page 14.

23 JUDGE STECKLER: Union's 82. Okay. Thank you. Then
24 that's already admitted, correct?

25 MS. LAROSE: Yes.

1 JUDGE STECKLER: Okay. Just to be clear.

2 MS. LAROSE: All right, Ms. LaRose. I'm sorry to
3 interrupt.

4 MS. LAROSE: Oh, that's all right.

5 Q BY MS. LAROSE: So the phrase shop work is in your
6 handwriting, Ms. Nielsen? Do I have that right?

7 A Yes.

8 Q Okay. And the phrase union meet is in your handwriting
9 as well?

10 A Yes, Ma'am.

11 Q Okay. So it's in your handwriting, but I've got to
12 check Needham's records on this, do I understand?

13 A You asked me if I was paid 9 hours for it. I don't
14 recollect. I don't recall. I don't know if they did
15 something else because of what I had to do that day. I
16 wrote down how long I was working and what I did. How they
17 paid me for it or what happened after I turned this in, I
18 can't testify to because I don't remember.

19 Q I understand. Okay. So if we looked at the payroll
20 records for the company and saw that you had been paid 9
21 hours, that would be consistent with this timecard, right?

22 A Yes, it would.

23 Q Okay. And that would -- and you do remember going to
24 Peoria to testify for the company in the unit determination
25 phase of this case?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A I do, Ma'am, yes.

2 Q Yes. And you didn't actually have to testify because
3 we were able to reach some sort of agreement. Strike that.
4 You didn't actually have to testify. You were there to
5 testify. Is that right?

6 A Yes, Ma'am.

7 Q Okay. Ms. Nielsen, it would be fair to say you smoke
8 more than a pack of cigarettes a day, right?

9 A I smoke a pack a day.

10 Q Okay.

11 MS. LAROSE: Well, those are all of my questions for
12 Ms. Nielsen.

13 EXAMINATION BY COURT

14 JUDGE STECKLER: Ms. Nielsen, were you subpoenaed to
15 testify today and to appear?

16 THE WITNESS: Yes, Ma'am.

17 JUDGE STECKLER: So you got a piece of paper in the
18 mail from whom?

19 THE WITNESS: Stanley's office.

20 JUDGE STECKLER: Okay. And for the proceeding in
21 2019, where you worked 9 hours, did you receive a subpoena
22 for that one?

23 THE WITNESS: No.

24 JUDGE STECKLER: To your recollection, were you paid
25 for that entire week the way you put down your hours?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: I honestly can't remember, Judge.

2 JUDGE STECKLER: Wouldn't you know if you were
3 underpaid for that week? Have you ever been underpaid by
4 Needham, Ms. Nielsen?

5 THE WITNESS: No, I've never been underpaid by
6 Needham, but did they have to pay me less because of some
7 reason or another? Possibly. I don't remember. It's been
8 awhile ago.

9 JUDGE STECKLER: Did you have any driving time going
10 to Peoria?

11 THE WITNESS: I did.

12 JUDGE STECKLER: About how much?

13 THE WITNESS: What's it take to get to Peoria from
14 Walcott? An hour and something? An hour and 20 minutes
15 maybe there and back.

16 JUDGE STECKLER: Each way?

17 THE WITNESS: Yeah.

18 JUDGE STECKLER: Okay. And about how much time did
19 you spend in the courtroom?

20 THE WITNESS: How long was I there?

21 JUDGE STECKLER: Besides it seeming like a few hours.

22 THE WITNESS: I think it was a few hours.

23 JUDGE STECKLER: And you stopped for your lunch break,
24 correct?

25 THE WITNESS: Yes. Yes, Ma'am.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Okay. When it was over and you got
2 back to Walcott, did you do any work that day?

3 THE WITNESS: Yes, I did.

4 JUDGE STECKLER: Okay. About how many hours did you
5 do that day?

6 THE WITNESS: I don't remember.

7 JUDGE STECKLER: Okay.

8 THE WITNESS: I worked a full day I'm sure, but I
9 don't remember how long after that. I don't have set hours.

10 JUDGE STECKLER: Okay. Do you get paid overtime if
11 you work over 8 hours a day?

12 THE WITNESS: I get overtime after 40 hours.

13 JUDGE STECKLER: After 40 hours. Okay. Are you
14 considered salaried?

15 THE WITNESS: No.

16 JUDGE STECKLER: Mr. Niew, you may continue if you
17 have questions.

18 MR. NIEW: No further questions.

19 JUDGE STECKLER: Mr. Williams, anything else?

20 MR. WILLIAMS: No questions, Your Honor.

21 JUDGE STECKLER: Ms. LaRose, any further questions?

22 MS. LAROSE: No, Your Honor.

23 JUDGE STECKLER: Thank you. Ms. Nielsen, you're about
24 to be excused as a witness, but we don't know how long
25 exactly the hearing is going go on, so as things are

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 progressing you may hear that hearing is over. Until that
2 time, please do not discuss your testimony with anyone,
3 including your husband. Not even the dog because the dog
4 might tell your husband. Okay?

5 THE WITNESS: All right.

6 JUDGE STECKLER: Okay. Thank you for coming this
7 afternoon.

8 *(Witness excused)*

9 Mr. Wright, if you can out that screen, that would be
10 great, until we get our next witness in, okay? Thank you.
11 We'll go off the record for a moment, please.

12 *(Off the record)*

13 JUDGE STECKLER: Back on the record. Respondent may
14 call its next witness. Mr. Niew, are you doing this or is
15 Mr. Wright? Who is calling the witness? Am I being heard
16 out there?

17 MR. NIEW: Yes, Your Honor.

18 JUDGE STECKLER: Okay. Mr. Niew, do you have the next
19 witness? Is my voice not coming through?

20 MR. WRIGHT: I can hear you now. It's been cutting
21 out.

22 JUDGE STECKLER: Okay. I think it was twisted. Mr.
23 Molinaro, how about you? You're the most important person
24 listening.

25 COURT REPORTER: I can hear everybody except for Mr.

1 Niew.

2 JUDGE STECKLER: Okay. Mr. Niew, give it a quick
3 test, please. Mr. Niew, can you hear me?

4 MR. NIEW: I can hear you, Judge.

5 JUDGE STECKLER: Okay.

6 MR. NIEW: Judge, can you hear me?

7 THE WITNESS: Yes, sir.

8 JUDGE STECKLER: Okay. We're still on the record.
9 Mr. Niew, who are you calling as your next witness?

10 MR. NIEW: Brandon McKay.

11 THE WITNESS: You keep cutting out. I can't hear what
12 you're saying.

13 JUDGE STECKLER: Okay. Am I still cutting out with
14 Mr. Williams? You can put your hand down now for just a
15 moment, Mr. McKay.

16 Mr. Williams, are you having any problems hearing me?

17 MR. WILLIAMS: No, I can hear you just fine, Your
18 Honor.

19 JUDGE STECKLER: Ms. LaRose?

20 COURT REPORTER: I think it's on their end, Judge.

21 JUDGE STECKLER: Okay. Let's go off the record and
22 fix the glitch.

23 *(Off the record)*

24 JUDGE STECKLER: Back on the record. Mr. McKay, we'll
25 try it again.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 (Whereupon,

2 **BRANDON MCKAY**

3 having been sworn/affirmed, was called as a witness herein
4 via Zoom, and was examined and testified as follows.)

5 JUDGE STECKLER: Please state your name and spell it
6 for the record.

7 THE WITNESS: Brandon McKay, B-r-a-n-d-o-n, McKay, M-
8 c-K-a-y.

9 JUDGE STECKLER: Okay. Is that K capitalized?

10 THE WITNESS: Big M, little C, capital K, lower case
11 a-y.

12 JUDGE STECKLER: Okay. Thank you. Is there anyone in
13 the room with you?

14 THE WITNESS: No, there's not.

15 JUDGE STECKLER: Is the door open or shut?

16 THE WITNESS: Shut.

17 JUDGE STECKLER: Do you have any papers in front of
18 you?

19 THE WITNESS: No.

20 JUDGE STECKLER: Have you discussed your testimony
21 with anyone?

22 THE WITNESS: No.

23 JUDGE STECKLER: Okay. Never ever?

24 THE WITNESS: Never ever.

25 JUDGE STECKLER: Okay. Thank you. Did you get a

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 subpoena to testify here today?

2 THE WITNESS: That's what I was told.

3 JUDGE STECKLER: Who told you?

4 THE WITNESS: Curt.

5 JUDGE STECKLER: Okay. But you didn't get a piece of
6 a paper from Mr. Niew's office or Mr. Wright's office
7 telling you to show up?

8 THE WITNESS: Unless it came in the mail in the last
9 couple of days or something.

10 JUDGE STECKLER: Okay. Thank you. Mr. Niew, you may
11 inquire.

12 DIRECT EXAMINATION

13 Q BY MR. NIEW: May I call you Brandon?

14 A Yes.

15 Q For whom are you currently employed by?

16 A Needham Excavating.

17 Q And when did you first become employed by Needham?

18 A Around five years ago. I don't remember the date.

19 Q Does March around 2016 sound about right?

20 A That's probably accurate.

21 Q And when you were hired at Needham Excavating, what was
22 your primary job?

23 A Working on the concrete recycler and running equipment.

24 Q Did you run -- in March when you started did you run
25 any heavy equipment?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yes.

2 Q What kind of equipment?

3 A Mostly excavators, skid loaders, backhoes.

4 Q Since that time -- you're still employed by Needham
5 Excavating?

6 A Correct.

7 Q And since you started with Needham, have your job
8 duties changed significantly?

9 A More responsibility, but mostly the same type of work.

10 Q What is more responsibility mean?

11 A I guess just being left on my own more instead of
12 necessarily working with someone.

13 Q When you say left now working by yourself, are you
14 working with someone who sets pipe or are you doing
15 everything yourself?

16 MS. LAROSE: Objection.

17 JUDGE STECKLER: Ms. LaRose, what's the objection?

18 MS. LAROSE: Your Honor, I'm just going to say asked
19 and answered, but I'll withdraw the objection.

20 JUDGE STECKLER: Mr. McKay, can you explain what your
21 responsibilities are now?

22 THE WITNESS: Oh, instead of working with say someone
23 else from Needham, I might go to a job and set pipe with
24 somebody from Crawford or Reagan, or another plumbing
25 company. So I would be the main operator on the job instead

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 of working with another Needham employee.

2 JUDGE STECKLER: Okay. Mr. Niew, you may continue.

3 Q BY MR. NIEW: When you described the work you were
4 just doing, were these Needham Excavating jobs or somebody
5 else's job?

6 A I guess I'm not sure how that works. If we're working
7 for Crawford or how that -- I just do what I'm told, I
8 guess.

9 Q Do you remember a union election scheduled sometime in
10 July of 2019?

11 A Yes.

12 Q Prior to that -- well, I'll withdraw that question.
13 What do you consider the management of Needham Excavating?

14 A Joe, Nick, Dan, and Curt.

15 Q And that's Joe, Nick, and Dan Needham?

16 A Correct.

17 Q And Curt McKinley?

18 A Correct.

19 Q Do you also consider them your supervisors?

20 A Correct.

21 Q Now from what you've described as the management team,
22 before the election did you hear any threats from anybody
23 from management?

24 A No, I did not.

25 Q Did anybody from management say to anyone that you

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 heard that if they vote for the union that somehow the jobs
2 are going to close?

3 A No.

4 Q Did you hear any promises from management if someone
5 votes against the union?

6 A No.

7 Q Did you hear anything from management before the
8 election that you in any way felt was coercive to you?

9 A No.

10 JUDGE STECKLER: Mr. Niew, what's the standard for
11 8(a)(1) here? Is it objective or subjective?

12 MR. NIEW: I think it's subjective.

13 JUDGE STECKLER: No, it's objective. Continue.

14 Q BY MR. NIEW: Do you know who Adam VanOpDorp is?

15 A Yes.

16 Q Have you worked with him on Needham job sites?

17 A Yes, I have.

18 Q And how frequently?

19 A Quite frequently.

20 Q Can you be more specific? How many times a month or a
21 week?

22 A I don't recall how exactly how many. Enough that I was
23 around him a lot.

24 Q Did you ever observe Adam -- well, I withdraw that
25 question. Do Needham employees have a standard starting

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 time?

2 A They like us to be there 15 minutes before starting
3 time which is 7:00.

4 Q And did you ever observe Adam VanOpDorp being at
5 Needham's job sites before 7:00 a.m.?

6 A I don't recall his exact show up times, no.

7 Q Do you recall ever seeing Adam showing up late?

8 A Not that I can recall. He was usually pretty punctual
9 getting there.

10 Q Do you recall Adam leaving before quitting time?

11 A He had a few times.

12 Q What's a few?

13 A I can think of one for example for sure that I know he
14 left to go to a birthday party and left me to take over for
15 him.

16 Q Did you see Adam ever operating a piece of equipment
17 and operating a cell phone?

18 A Yes.

19 Q How often?

20 A Quite often.

21 Q Would that mean most of the time you saw him or some of
22 the time?

23 A I say nearly every day.

24 Q And would you describe to the Judge how he would hold
25 the phone?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A On his shoulder to his ear like that.

2 MR. NIEW: Let the record reflect that the witness put
3 down his head to the side and lifted up his shoulder.

4 Q BY MR. NIEW: Did you ever see Adam wear ear pods while
5 he was driving heavy equipment?

6 A Yeah. He had bought a set after were told not use
7 phones while running machines.

8 Q Okay. My question is did he use the ear pods when he
9 was operating equipment?

10 MS. LAROSE: Objection. Asked and answered.

11 JUDGE STECKLER: Mr. McKay, would you be able to see
12 if he had the ear pods in?

13 THE WITNESS: Yeah. I guess. I mean he might have
14 had them in his ears, but whether he was on the phone or not
15 or had the radio going, I wouldn't have any idea of that.

16 JUDGE STECKLER: You may continue, Mr. Niew.

17 Q BY MR. NIEW: Do you know Brett Gripp?

18 A Yes.

19 Q How did you get to know him?

20 A Through working at Needham.

21 Q Did you see him on job sites?

22 A Yes.

23 Q How often?

24 A I drove a truck a little bit, so sometimes when I was
25 driving, you know, once or twice a month, he'd also be

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 driving when he was moving equipment. He seemed to show up
2 once in awhile to move a piece of equipment what little bit
3 he did that.

4 Q Did you observe -- I'll withdraw that question. Do you
5 have an opinion as to whether or not Brett Gripp was a safe
6 driver?

7 MR. WILLIAMS: Objection.

8 JUDGE STECKLER: What's the objection?

9 MR. WILLIAMS: He's calling for an opinion without
10 laying a foundation.

11 JUDGE STECKLER: Mr. Niew, can you lay a foundation
12 for us, please?

13 Q BY MR. NIEW: Did you ever see Brett Gripp driving a
14 truck too fast or unsafely?

15 A I can't say that I have, no.

16 Q Did Brett Gripp ever ask you for help with respect to
17 either loading or unloading equipment?

18 A Yes, he had.

19 Q And do you recall when that was?

20 A The date, no. I can recall what job site I loaded an
21 excavator. I don't recall which excavator.

22 Q What was the job site?

23 A It was a school in Bettendorf. I don't remember the
24 name of the school. It would have been off of Locust.

25 Q And what did Brett ask you to do?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A To load the excavator for him and help him chain it
2 down.

3 Q Did he tell you why?

4 A He wasn't sure what chains or binders needed to be on
5 it to be legal.

6 Q Did you tell anybody from management about that
7 incident?

8 A Yes.

9 Q Who did you tell?

10 A I told Curt.

11 JUDGE STECKLER: When did you tell him, Mr. McKay?

12 THE WITNESS: The date I can't remember, but after I
13 had helped him load it, so you know, whenever that would
14 have been.

15 JUDGE STECKLER: Within a day, a month, a year?

16 THE WITNESS: Oh, within a day or possibly two.

17 JUDGE STECKLER: And did you have to help him any
18 other times?

19 THE WITNESS: Off the top of my head, I can't recall.
20 That one sticks in my head.

21 JUDGE STECKLER: Okay. Was it a routine that you
22 helped each other with those sort of tasks at times?

23 THE WITNESS: Not normally.

24 JUDGE STECKLER: What kind of -- did anybody else ever
25 ask for assistance?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: No. Before that it was Clint, and I
2 never had to help him.

3 JUDGE STECKLER: Okay. Since that time have you had
4 to help anybody?

5 THE WITNESS: No.

6 JUDGE STECKLER: Okay. You may continue, Mr. Niew.

7 Q BY MR. NIEW: You testified so far that you operated
8 heavy equipment and you drove a truck. Were there any other
9 functions that you did while working for NEI or Needham
10 Excavating?

11 A No. I mean labor a little bit. We could pretty much
12 do whatever we needed to do to get the job done.

13 Q Did you participate in any other types of jobs other
14 than what I would call the typical excavator type job sites?

15 A I guess I'm not sure if I understand the question.

16 Q Well, did you ever work on any buildings?

17 A No.

18 MR. NIEW: That concludes Respondent's testimony.

19 JUDGE STECKLER: Mr. Williams?

20 CROSS-EXAMINATION

21 Q BY MR. WILLIAMS: You testified that Adam VanOpDorp
22 left before quitting time on one occasion?

23 A Yes.

24 Q Do you remember when that was?

25 A The date I don't remember. I don't remember the year

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 honestly.

2 Q You don't remember the year either?

3 A I just remember that he asked if I had everything under
4 control because he wanted to go to a birthday party.

5 Q Okay. Now while you've been employed at Needham
6 Excavating, Inc., have you seen other employees on cell
7 phones while they were operating equipment?

8 A We usually stop the machines, but yes, I mean if we
9 have a call, we are allowed to answer them, but we stop the
10 machines to do it.

11 Q But my question is have you seen other employees on
12 cell phones while they were operating equipment?

13 A Yes.

14 Q Okay. And how often?

15 A Not very often.

16 Q Okay. Two or three times, ten times?

17 A Yeah, I suppose I've seen -- not a day, but yes.

18 Q How many times per week?

19 A A few times. A handful. Five a week.

20 Q Okay. And you said you helped Brett Gripp load an
21 excavator?

22 A Yes.

23 Q And you reported that situation to Curt McKinley,
24 correct?

25 A Yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay. Do you remember the year?

2 A No.

3 Q Okay. You don't know if it was 2018 or 2019?

4 A No. I don't know when that job was even going on.

5 Q And which job was it?

6 A A school. It would have been south of Locust Street in
7 Bettendorf.

8 MR. WILLIAMS: I have no further questions.

9 JUDGE STECKLER: Ms. LaRose?

10 MS. LAROSE: No further questions, Your Honor.

11 EXAMINATION BY COURT

12 JUDGE STECKLER: Mr. McKay, was anyone else late to the
13 job site that you can recall?

14 THE WITNESS: Ever?

15 JUDGE STECKLER: Well, yeah. Within the last few
16 years, yes.

17 THE WITNESS: Yes, but we -- as far as I know,
18 everyone always calls Curt or a supervisor to inform that
19 they are running late.

20 JUDGE STECKLER: Okay. Anybody else leave early?

21 THE WITNESS: Yeah. And as far as I know, it has
22 always been approved by a supervisor. I don't have any idea
23 if Adam's was approved or not.

24 JUDGE STECKLER: Okay. Thank you. Regarding other
25 people on the cell phone, was there a change after -- did

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Needham at some point announce their cell phone policy
2 through an email?

3 THE WITNESS: Yes. Email and text also I believe.

4 JUDGE STECKLER: Okay. Was the amount of cell phone
5 usage while operating the machinery, did that change from
6 before to after that emphasis on the policy?

7 THE WITNESS: Are we talking everyone or just Adam?

8 JUDGE STECKLER: Everyone, please.

9 THE WITNESS: Everyone, yes. Overall everyone -- now
10 we respect -- everyone respects their policy. Every time
11 now I see someone on a phone, we stop the machines. That's
12 the policy.

13 JUDGE STECKLER: Did you know who Adam was on the
14 phone with when you observed him on the phone?

15 THE WITNESS: I believe generally his wife.

16 JUDGE STECKLER: Okay. But what led you to that
17 conclusion?

18 THE WITNESS: Oh, when we'd go to lunch or something
19 he'd say my wife called and the kids are doing whatever.
20 Just kind of informed me, you know. We'd just talk.

21 JUDGE STECKLER: Okay.

22 THE WITNESS: I just assumed that it was his wife that
23 he was calling and talking to. I'm sure sometimes it was
24 management or a truck driver calling for directions. That
25 happens a lot.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Okay. And management -- you didn't
2 have a company issued cell phone to work on, did you?

3 THE WITNESS: No.

4 JUDGE STECKLER: In any of the operating machines,
5 correct?

6 THE WITNESS: No, correct.

7 JUDGE STECKLER: And on the heavy machinery, did you
8 have a CB?

9 THE WITNESS: No, just trucks do.

10 JUDGE STECKLER: So when you had to talk to -- have
11 you had to call management from your machine during the day?

12 THE WITNESS: Yes.

13 JUDGE STECKLER: And did they ask if you were
14 operating equipment?

15 THE WITNESS: I assume they just assumed that I
16 stopped the machine, but no, they did not ask.

17 JUDGE STECKLER: Okay. Mr. Niew, additional
18 questions?

19 MR. NIEW: Yes.

20 REDIRECT EXAMINATION

21 Q BY MR. NIEW: You answered the Judge I believe that
22 once the policy was announced, everybody respected it. Did
23 I hear that correctly?

24 A To the best of my knowledge, yes.

25 Q Did Adam respect that policy after it was announced?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A No, I still seen him on his phone after that was
2 announced, yes.

3 MR. NIEW: No further questions.

4 JUDGE STECKLER: Mr. McKay, coming back to something
5 that you said. You said that he got the ear pods after
6 that.

7 THE WITNESS: Yes.

8 JUDGE STECKLER: Okay. And you also said that he
9 didn't -- you didn't know if he was using his ear pods or
10 not.

11 THE WITNESS: I mean I was never really working right
12 beside him. You know, we're on machines. You can see he
13 had the pod in his ear, but I wouldn't know if he was
14 talking on it or if he had the, you know, some sort of music
15 station playing.

16 JUDGE STECKLER: Yes. So you don't know if he was
17 singing with the radio at all?

18 THE WITNESS: Right.

19 JUDGE STECKLER: Okay. Mr. Williams?

20 MR. WILLIAMS: No further questions, Your Honor.

21 JUDGE STECKLER: Ms. LaRose?

22 MS. LAROSE: No, Your Honor.

23 JUDGE STECKLER: Mr. Niew?

24 MR. NIEW: Nothing further, Your Honor.

25 JUDGE STECKLER: Mr. McKay, you're about to be excused

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 as a witness. Thank you for coming in this afternoon. The
2 hearing may be going on for a while, not sure how long. But
3 in the meantime, please do not discuss your testimony with
4 anyone until after the hearing is over.

5 THE WITNESS: Okay.

6 JUDGE STECKLER: Thank you for your time.

7 *(Witness excused)*

8 We'll be off the record while Respondent gets his next
9 witness.

10 *(Off the record)*

11 JUDGE STECKLER: Back on the record. Mr. Williams,
12 you had an exhibit to propose?

13 MR. WILLIAMS: Yes. May I have Your Honor's
14 permission to share my screen?

15 JUDGE STECKLER: Yes. Can you minimize that, Mr.
16 Williams? Thank you.

17 MR. WILLIAMS: Your Honor, this is what's been marked
18 as General Counsel's Exhibit 13, which is combining the
19 signature page for the protective order portion that was
20 signed by the Charging Party and myself and a portion signed
21 by counsel for Respondent.

22 **(General Counsel's Exhibit No. 13 marked for**
23 **identification.)**

24 So at this time General Counsel offers General
25 Counsel's Exhibit 13 into evidence.

1 JUDGE STECKLER: Any objections?

2 MR. NIEW: No objection from Respondent.

3 JUDGE STECKLER: Ms. LaRose, have you frozen up? No?

4 MS. LAROSE: No, Your Honor. No objection.

5 JUDGE STECKLER: General Counsel's 13 is admitted.

6 **(General Counsel's Exhibit No. 13 received into evidence.)**

7 Respondent may call his next witness.

8 MR. NIEW: We call Tracey Marshall.

9 (Whereupon,

10 **TRACEY MARSHALL**

11 having been sworn/affirmed, was called as a witness herein
12 via Zoom, and was examined and testified as follows.)

13 JUDGE STECKLER: Please state your name and spell it
14 for the record.

15 THE WITNESS: Tracey Marshall, T-r-a-c-e-y, M-a-r-s-h-
16 a-l-l.

17 JUDGE STECKLER: Were you subpoenaed to testify today?

18 THE WITNESS: No, I was not.

19 JUDGE STECKLER: Are you in a room by yourself?

20 THE WITNESS: Yes, I am.

21 JUDGE STECKLER: Is the door open or shut?

22 THE WITNESS: Closed.

23 JUDGE STECKLER: Have you discussed your testimony
24 with anyone?

25 THE WITNESS: No.

1 JUDGE STECKLER: Ever?

2 THE WITNESS: No.

3 JUDGE STECKLER: Okay. You may continue, Mr. Niew.

4 DIRECT EXAMINATION

5 Q BY MR. NIEW: Can I call you Tracey?

6 A Yes.

7 Q Tracey, who are you currently employed by?

8 A Needham Excavating.

9 Q And approximately when did you first get employed?

10 A April 2014.

11 Q And what were you hired as?

12 A An operator.

13 Q Did you do any occasional laboring work also?

14 A Yes.

15 Q Now do you know Adam VanOpDorp?

16 A VanOpDorp, yes, I do.

17 Q And have you worked on job sites with him?

18 A Yes, I have.

19 Q Approximately how many times?

20 A Several. I wouldn't even know where to start for a
21 date.

22 Q Would it be fair to say quite often?

23 A Yes.

24 Q Does Needham Excavating have a standard starting time?

25 A Yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 Q What is that?
- 2 A It's 7 o'clock.
- 3 Q Now at the times that you were on a job site with Adam,
- 4 did you ever seen him come in after 7:00 a.m.?
- 5 A Yes.
- 6 Q How often?
- 7 A A few times a week.
- 8 Q Does Needham Excavating have a policy about fueling and
- 9 greasing equipment?
- 10 A Yes, we do.
- 11 Q And what is that policy?
- 12 A Every day at the end of the day.
- 13 Q To do what?
- 14 A To fuel and grease and make sure your machine is ready
- 15 to run the first thing in the morning.
- 16 Q Now were you at a job site, any job sites, with Adam
- 17 and he failed to fuel and grease at the end of the day?
- 18 A Yes.
- 19 Q Approximately how many times?
- 20 A Probably about the same, a few times a week.
- 21 Q Did you tell anybody about that?
- 22 A Yes.
- 23 Q Who?
- 24 A Our bosses.
- 25 Q Who do you consider your bosses?

- 1 A It would be Joe, Dan, Curt, and Nick.
- 2 Q And that's three Needhams and Curt McKinley?
- 3 A Yes.
- 4 Q Now who is the person that got you hired at Needham
- 5 Excavating?
- 6 A I got on through Adam VanOpDorp.
- 7 Q Do you know who Chad Havill is?
- 8 A Yes, I do.
- 9 Q Who is he?
- 10 A I actually got him on. I've known him for a few years.
- 11 He lives in the same town I do.
- 12 Q Did Chad Havill ever call you while working at a job
- 13 site?
- 14 A Yes.
- 15 Q Do you remember what job site?
- 16 A I was at a QuikTrip on Tanglefoot (phonetic) I think,
- 17 and he was at Dan Dolan. We call it northeast, one of the
- 18 Dan Dolan jobs.
- 19 Q And what did Chad Havill tell you?
- 20 MR. WILLIAMS: Objection. Calls for hearsay.
- 21 MR. NIEW: It's impeachment as to what Chad Havill had
- 22 said.
- 23 JUDGE STECKLER: That's not impeachment of Chad
- 24 Havill. Mr. Marshall, are you about to testify to something
- 25 that Mr. Havill observed?

1 THE WITNESS: Yes.

2 JUDGE STECKLER: On what date?

3 THE WITNESS: I don't have that information in front
4 of me. I'm sorry.

5 JUDGE STECKLER: Can you remember a year?

6 THE WITNESS: It would have been -- it was two years
7 ago. It would have been 2019. I'd like to say it was in
8 May, but it might have been April actually.

9 JUDGE STECKLER: So May or April of 2019?

10 THE WITNESS: Yeah. I remember it because it was
11 right when my dad was sick, so yeah.

12 JUDGE STECKLER: Mr. Niew, can you explain to me why
13 it's not hearsay? Is it going to the truth of the matter
14 asserted?

15 MR. NIEW: For the matter asserted by Chad, yes.

16 JUDGE STECKLER: Mr. Williams, can you explain why it
17 is hearsay?

18 MR. WILLIAMS: It's an out of court statement offered
19 for the truth of the matter asserted by someone who was not
20 a part of the conversation itself. If he wants to get in a
21 conversation between him and Chad, he needs Chad, but he
22 can't have Tracey Marshall testify about what Chad
23 discussions Chad had with Adam VanOpDorp. That's clearly
24 hearsay.

25 MR. NIEW: Your Honor, it's not being offered for the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 truth of the matter. It's being offered as to explain why
2 Needham Excavating acted the way they did.

3 JUDGE STECKLER: Ms. LaRose, do you want to get in on
4 this?

5 MS. LAROSE: I'm going to fully adopt Mr. Williams'
6 statements and observe for the record now we've got flipped.
7 First it was for the truth of the matter asserted and now
8 it's for what Needham did.

9 JUDGE STECKLER: Let me put it this way. I'm going to
10 allow the testimony, but we can argue the weight on the
11 brief of whether I should give it any weight, and I will
12 eventually make a decision on whether it's hearsay or not
13 given what Mr. Marshall says. Mr. Marshall, you may testify
14 as to what Mr. Havill called on you that morning which you
15 stated was in May or April 2019.

16 Q BY MR. NIEW: What did Mr. Havill tell you in the
17 call?

18 A He told me that I believe it was Shannon Vickers, one
19 of the business agents for 150, had pulled onto the job site
20 and was talking to Adam VanOpDorp on company time.

21 Q And did he say anything about whether or not Adam was
22 on a machine talking to Vickers or was he off the machine?

23 A That I don't remember getting any information about
24 that.

25 Q Do you know Brett Gripp?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 A Yes, I do.
- 2 Q Did you ever work with him?
- 3 A Yes, I did.
- 4 Q And on what kind of jobs?
- 5 A Several jobs.
- 6 Q Do you remember any in particular?
- 7 A We did a job at 18th Street in Rock Island. I worked
- 8 with him -- I've forgotten the names of the jobs. Like
- 9 Coca-Cola. I mean I would see him on a lot of jobs when he
- 10 was driving a truck.
- 11 Q Did you ever see Brett Gripp drive or operate heavy
- 12 equipment?
- 13 A No.
- 14 Q Did Brett Gripp ever ask you for any assistance on the
- 15 job site?
- 16 A Yes. When he would show up say with a lowboy moving
- 17 equipment, he would ask me to unload it for him.
- 18 Q Did he say why?
- 19 A Because he couldn't run it, not safely.
- 20 Q Did you observe Brett Gripp's driving while you were on
- 21 the same job sites with him?
- 22 A Yes, I did.
- 23 Q Did you ever call him by a name with respect to the
- 24 type of driver he is?
- 25 A He was just not a good driver. I'd say he was kind of

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 a hot dog you know. He drove really hard and reckless, I
2 guess.

3 Q You observed that?

4 A Yes.

5 Q Now --

6 JUDGE STECKLER: Let me ask a question here about your
7 testimony, Mr. Marshall. If you're on a job site, how often
8 would you see him driving?

9 THE WITNESS: Like -- okay. So if I was loading up
10 dirt and he was driving a tandem, I would see him multiple
11 times a day coming to reload or bringing rock to the job
12 site.

13 JUDGE STECKLER: So for what period of time would you
14 see him driving up to the job site? A couple of minutes, a
15 couple of hours?

16 THE WITNESS: It just kind of depended on the setting
17 and what we were doing at that particular time, I guess.
18 Sometimes it just be a few minutes and sometimes it might be
19 a half-hour or an hour.

20 JUDGE STECKLER: If you're working on your machine,
21 how is it that you had an opportunity to observe how he was
22 driving?

23 THE WITNESS: Because it was at the trucks that I'm
24 loading, the ones that he would have been driving.

25 JUDGE STECKLER: Okay. You may continue, Mr. Niew.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q BY MR. NIEW: Did you ever observe Brett Gripp hitting
2 a pothole?

3 A I didn't see him do it. I got a phone call that he had
4 hit a pothole.

5 MR. WILLIAMS: Objection. Objection. Calls for
6 hearsay.

7 JUDGE STECKLER: Sustained.

8 Q BY MR. NIEW: Do you know if Brett Gripp ever cracked
9 a steering mechanism on a truck?

10 A To my knowledge that's what happened when he hit that
11 pothole, yes.

12 JUDGE STECKLER: Wait, wait, wait.

13 Mr. Marshall, how did you know that he cracked the
14 steering mechanism?

15 THE WITNESS: From talking to the mechanic, our
16 mechanic.

17 MR. WILLIAMS: Objection, Your Honor. Hearsay.

18 JUDGE STECKLER: It is based on hearsay. And how
19 would Mr. Niew know that you knew that, that he hit a
20 pothole?

21 THE WITNESS: I turned it into bosses.

22 JUDGE STECKLER: When did you turn into the bosses?

23 THE WITNESS: Right after it happened.

24 JUDGE STECKLER: Well, if you didn't see it happen,
25 how did you manage to turn that in?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: He called me and told me that he was
2 broke down and he wasn't going to make it back to the job.

3 JUDGE STECKLER: Okay. Now when the mechanics had it,
4 did the mechanics report it to your knowledge?

5 THE WITNESS: I'm sorry?

6 JUDGE STECKLER: Wouldn't the mechanics report that
7 instead of you?

8 THE WITNESS: He was just letting me know that he
9 wasn't going to be back to the job site. I'm sorry. That's
10 what I was trying to tell you.

11 JUDGE STECKLER: So did he tell you he hit a pothole?

12 THE WITNESS: Yes.

13 JUDGE STECKLER: Did Mr. Gripp tell you he hit a
14 pothole?

15 THE WITNESS: Yes, he did.

16 JUDGE STECKLER: Okay. How long ago did that happen?

17 THE WITNESS: To the best of my knowledge, I think it
18 was the fall of 2018.

19 JUDGE STECKLER: Do you know if he was ever
20 disciplined for that?

21 THE WITNESS: No, I do not know.

22 JUDGE STECKLER: Did you ever get disciplined?

23 THE WITNESS: Did I get disciplined for that?

24 JUDGE STECKLER: For anything.

25 THE WITNESS: No.

1 JUDGE STECKLER: Okay. You may continue, Mr. Niew.

2 Q BY MR. NIEW: When Brett Gripp reported that pothole
3 hitting to you, what were you going to do the rest of the --
4 or what were you able to do the rest of the day?

5 A I mean I just didn't have the same amount of trucks, so
6 it slowed down the process of finishing the job for
7 completion.

8 Q Do you remember a system called ScheduleBase?

9 A Yes

10 Q Do you remember if it changed at some point in time in
11 2019?

12 A I believe so.

13 Q How did it change?

14 A We didn't have -- there wasn't as much information on
15 there as far as -- I couldn't see what other employees were
16 doing or what job they were on.

17 Q What could you see?

18 A I could see what I was doing.

19 Q Nobody else?

20 A No.

21 MR. NIEW: No further questions.

22 JUDGE STECKLER: Mr. Williams?

23 MR. WILLIAMS: Yes.

24 CROSS-EXAMINATION

25 Q BY MR. WILLIAMS: Mr. Marshall, you testified that Adam

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 VanOpDorp arrived to work a few times late. Do you remember
2 when that was?

3 A I do not. I do not.

4 Q Do you remember the year?

5 A It would have been several years.

6 Q A year ago?

7 A No, several years altogether, yeah. I've been here 7
8 years, and it was -- I mean quite a bit for two to three
9 years there, yeah.

10 Q Did you ever report any of these incidences to
11 management?

12 A Yes.

13 Q Who did you report it to?

14 A I think at the time it would have been Jeff Dunleavey
15 when he worked here.

16 Q Okay. And so when was he employed there?

17 A I don't have that information either. It would have
18 been -- I think he was gone three years ago or two years
19 ago. He was here about two years I think, maybe three.

20 Q Okay. Have you seen any other employees arrive to work
21 late?

22 A Yeah. I mean, you know, I've seen other employees, but
23 when I get a phone call --

24 Q Just a yes or no answer. Have you seen other --

25 A Yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Have you seen other employees arrive to the job site
2 and to work late?

3 A Yes.

4 Q Okay. And did you ever report any of those people to
5 management for being late?

6 A Yes.

7 Q Okay. Do you know if they were disciplined?

8 A No, I do not.

9 JUDGE STECKLER: Mr. Marshall, I do have a question
10 down that same path. After Mr. Dunleavey was gone, did you
11 report Mr. VanOpDorp to anybody else for being late?

12 THE WITNESS: I don't believe so.

13 JUDGE STECKLER: So why did you stop?

14 THE WITNESS: From telling anybody else?

15 JUDGE STECKLER: Yes, sir.

16 THE WITNESS: At the time, that's who I talked to
17 every day was Jeff Dunleavey, but he no longer works there,
18 so I talked to somebody else.

19 JUDGE STECKLER: Okay. So you did talk to somebody
20 else about it after Mr. Dunleavey left?

21 THE WITNESS: No, I think it was about the same time
22 that he was gone. Yeah, it would have been -- after that it
23 probably would have been Curt.

24 JUDGE STECKLER: Okay. So you did tell Curt?

25 THE WITNESS: Yeah.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: About how many times did you tell
2 Curt?

3 THE WITNESS: I honestly can't -- I don't know that
4 answer.

5 JUDGE STECKLER: Okay. A couple of times?

6 THE WITNESS: A few, yeah.

7 JUDGE STECKLER: Mr. Williams, you may continue.

8 Q BY MR. WILLIAMS: Mr. Marshall, you also testified
9 that Adam VanOpDorp failed to grease equipment a few times a
10 week.

11 A Yes.

12 Q Do you remember when that was?

13 A The same answer. Within the two or three years that --
14 before he was done.

15 Q Okay. So two or three years before he was discharged?

16 A Yes.

17 Q Okay. Have other employees failed to grease a piece of
18 equipment that you know of?

19 A I'm sure there has been, yes.

20 Q Do you know if they were disciplined or not?

21 A No, I don't.

22 Q Okay.

23 A I don't know. I don't take care of that part of it.
24 I'm sorry.

25 Q Okay. So these alleged incidences where you assert

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 that Adam VanOpDorp failed to grease pieces of equipment,
2 did you ever tell management?

3 A Yes.

4 Q And who did you tell?

5 A It would have been Jeff Dunleavey or Curt. The
6 mechanics would call me and ask me about a piece that wasn't
7 maintained properly.

8 Q And so when would that have been when you reported it
9 to either Jeff or Curt?

10 A It would been -- like I said, the last two or three
11 years that he worked here off and on, you know.

12 Q Well --

13 A I didn't --

14 Q Well, was it '17 or '18, '19?

15 A Yes.

16 Q Which one?

17 A All of them.

18 Q But you don't know when --

19 A I didn't write down --

20 Q -- during those years?

21 A I didn't write down the dates. No, I did not.

22 Q And you testified that Brett Gripp asked you to help
23 him unload a loader?

24 A Yes.

25 Q Okay. And when was that?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A That would have been late fall or early spring. Late
2 fall of 2018 or early spring of 2019.

3 Q Okay. Did you report that particular incident to
4 anyone in management?

5 A I don't believe I did.

6 MR. WILLIAMS: I don't have any further questions.

7 JUDGE STECKLER: Ms. LaRose?

8 MS. LAROSE: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 Q BY MS. LAROSE: Mr. Marshall, you worked on a job at
11 the Christ United Methodist Church on 7th Street in East
12 Moline, right?

13 A Yes.

14 Q And that job was around April or May of 2017, right?
15 I'm sorry, 2019.

16 A Yes, I was going to say it didn't seem that long ago.

17 Q Is that right?

18 A Yeah, that one is right.

19 Q Okay. And misgraded on the basement of that project,
20 right?

21 A Yes, I did.

22 Q And the concrete contractor caught it, right?

23 A Yes. There is -- yeah.

24 Q And Needham had to re-dig that basement, right?

25 A I did, yes. Well, yeah, Dan and I did, yeah.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay. For Needham?

2 A I'm sorry?

3 Q For Needham?

4 A Yes.

5 Q Okay. And that was at least a day's worth of work?

6 A No.

7 Q And it would have involved multiple dump trucks, right?

8 A I think it was like eight loads or seven loads.

9 Q You're quite a heavy smoker, right, Mr. Marshall?

10 A Yeah.

11 Q And you're smoking on equipment, right?

12 A I'm sorry?

13 Q You're smoking in your equipment, right?

14 A No, I do not.

15 Q Uh-huh.

16 MS. LAROSE: Those are all of my questions, Your

17 Honor.

18 EXAMINATION BY COURT

19 JUDGE STECKLER: Mr. Marshall, could you tell me what

20 was involved in re-digging that basement?

21 THE WITNESS: It was miscommunication on elevations.

22 JUDGE STECKLER: I mean what did you have to do to fix

23 it?

24 THE WITNESS: We went in with an excavator and just

25 pulled another I think it was six inches off. And the dozer

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 went right back down in there and pushed it all out. It was
2 pretty quick.

3 JUDGE STECKLER: Okay. So did you have to add more
4 concrete to even it out when it was done?

5 THE WITNESS: No, I didn't dig it deep enough the
6 first time.

7 JUDGE STECKLER: Oh, you didn't dig it deep enough.
8 Okay.

9 THE WITNESS: Yes.

10 JUDGE STECKLER: Had concrete already been poured at
11 that point?

12 THE WITNESS: No.

13 JUDGE STECKLER: Okay. How was the mistake caught?

14 THE WITNESS: When they shot elevations.

15 JUDGE STECKLER: Who shoots the elevations?

16 THE WITNESS: I'm sorry. When the concrete came in
17 and shot elevation they caught where it -- the elevation was
18 missed, yes.

19 JUDGE STECKLER: Okay. So how did management find out
20 that the elevation had been missed?

21 THE WITNESS: I think they got a phone call from the
22 concrete company, and they sent us over there to fix the
23 problem.

24 JUDGE STECKLER: Okay. Question also. What happened
25 after you missed -- misgraded? What if anything did

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 management do to you?

2 THE WITNESS: Nothing really. They asked me what
3 happened, and we moved on and we fixed the problem and went
4 on with our day.

5 JUDGE STECKLER: Okay. Do you all switch out of
6 machines on a regular basis so that one day you're working
7 one machine and one day you're working another type of
8 machine?

9 THE WITNESS: Yes.

10 JUDGE STECKLER: So when you come in in the morning,
11 can you tell whether something has been greased or not?

12 THE WITNESS: Most of the time, yes. Just by looking
13 at the grease fittings themselves.

14 JUDGE STECKLER: Okay. Just by looking at the grease
15 fittings.

16 THE WITNESS: If it's covered in mud like it's never
17 been touched, you know, or if it looks like somebody cleaned
18 it and greased it.

19 JUDGE STECKLER: What happens if it rains?

20 THE WITNESS: Most of the time nothing as far as the
21 grease. I mean it stays on there. Like I said, some of
22 them have like little pockets where the (inaudible) are, so
23 you actually have to take a screwdriver or something and
24 clean the dirt out of it to see it. The rain I mean it's
25 not going to matter to it, you know. You can definitely

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 tell when it has been done.

2 JUDGE STECKLER: You don't live in Texas.

3 THE WITNESS: No.

4 JUDGE STECKLER: About how many packs a day do you
5 smoke, sir?

6 THE WITNESS: A pack to a pack and a half.

7 JUDGE STECKLER: So how often do you take smoking
8 breaks?

9 THE WITNESS: I mean honestly the most of the time I
10 smoke is on the way to work or on the way home. Maybe after
11 a lunch break.

12 JUDGE STECKLER: How far away do you live from most of
13 the job sites?

14 THE WITNESS: Anywhere from 30 to 40 minutes.

15 JUDGE STECKLER: So are you a chain smoker when you're
16 not at work?

17 THE WITNESS: Possibly. Not all the time. I mean
18 when I have (b)(6), (b)(7)(C) I don't smoke very much. I don't know
19 how to answer that I guess.

20 JUDGE STECKLER: Mr. Niew, do you have any redirect?

21 MR. NIEW: Yes.

22 REDIRECT EXAMINATION

23 Q BY MR. NIEW: The Christ United Church, how long did it
24 take you to correct the problem?

25 A I think it was about two hours. And hour and a half.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Not very long.

2 Q Now Mr. Williams was asking you some questions about
3 coming in late, and you started to talk about phone calls,
4 and you got cut off. What phone calls were you referring
5 to?

6 A Just kind of a courtesy call and letting somebody know,
7 hey, I'm still at this job or I've to run and get parts or
8 I'm running behind. Just kind of letting -- it's nice that
9 we can communicate on the job, you know.

10 Q In response to Mr. Williams' questioning he asked you I
11 believe how long was Adam not greasing the equipment and you
12 sort of got cut off and you said two to three years. Did
13 you mean it was two to three years ago or it's been constant
14 for two to three solid years?

15 A In about a two- to three-year time period he started,
16 you know, a few days a week he wouldn't do it.

17 MR. NIEW: I have no further questions, Judge.

18 JUDGE STECKLER: Mr. Williams?

19 MR. WILLIAMS: No questions, Your Honor.

20 JUDGE STECKLER: Ms. LaRose?

21 MS. LAROSE: Your Honor, if I could just have a
22 minute, please.

23 JUDGE STECKLER: Yes. We'll go off the record for a
24 minute, please.

25 MS. LAROSE: Thank you, Your Honor.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 (Off the record)

2 JUDGE STECKLER: Back on the record.

3 MS. LAROSE: No further questions of this witness,
4 Your Honor.

5 JUDGE STECKLER: Thank you. If anyone else has
6 questions, speak now.

7 MR. NIEW: None for Respondent.

8 JUDGE STECKLER: Okay.

9 MR. WILLIAMS: None for the General Counsel.

10 JUDGE STECKLER: Okay. And I'm not going to ask
11 anymore, Mr. Marshall, so that is the end of your testimony
12 for the day. You might be recalled as a witness later on.
13 We thank you for coming in and talking with us. But in the
14 meantime, please do not discuss your testimony with anyone
15 until after the hearing is over, and I'm sure you will hear
16 about it somewhere at the work site. So you may leave that
17 room.

18 THE WITNESS: All right. Thank you.

19 JUDGE STECKLER: Thank you.

20 (Witness excused)

21 Is Respondent calling any other witnesses this
22 afternoon?

23 MR. NIEW: I have one more short witness I would
24 really like to call.

25 JUDGE STECKLER: Okay. We can do that.

1 MR. NIEW: So I don't have to bring him back tomorrow
2 morning.

3 JUDGE STECKLER: That works well for me. And as a
4 result, it works well for everyone, correct?

5 MR. NIEW: Yes.

6 JUDGE STECKLER: So, Mr. Wright has gone to get him,
7 correct, him or her?

8 MR. NIEW: Mr. Wright went to get him.

9 JUDGE STECKLER: Okay. Can you give us a preview of
10 who this might be?

11 MR. NIEW: Caleb Hunter, C-a-l-e-b, H-u-n-t-e-r.

12 JUDGE STECKLER: Okay. Let's go off the record for
13 just a moment, please.

14 (Off the record)

15 JUDGE STECKLER: Back on the record. Mr. Niew, you're
16 calling your next witness as Mr. Hunter, correct?

17 MR. NIEW: Yes.

18 (Whereupon,

19 CALEB HUNTER

20 having been sworn/affirmed, was called as a witness herein
21 via Zoom, and was examined and testified as follows.)

22 JUDGE STECKLER: Thank you. Please state your name
23 and spell it for the record.

24 THE WITNESS: Caleb Hunter, C-a-l-e-b, H-u-n-t-e-r.

25 JUDGE STECKLER: Mr. Hunter, in that room, is there

1 anybody else in there with you?

2 THE WITNESS: No, Ma'am.

3 JUDGE STECKLER: Door open or shut?

4 THE WITNESS: Shut.

5 JUDGE STECKLER: Do you have any documents with you?

6 THE WITNESS: No, I do not.

7 JUDGE STECKLER: Did you get a subpoena to testify
8 today?

9 THE WITNESS: Yes.

10 JUDGE STECKLER: And who did you get that subpoena
11 from?

12 THE WITNESS: It was brought, and I was just told to
13 come here by the lawyers.

14 JUDGE STECKLER: Okay. Did you -- was it like an
15 official form?

16 THE WITNESS: No, no, no. I was just told to come
17 here.

18 JUDGE STECKLER: Okay. Who told you to come here?

19 THE WITNESS: Curt, Curt McKinley.

20 JUDGE STECKLER: Okay. Did you discuss your testimony
21 with anybody?

22 THE WITNESS: No, I did not.

23 JUDGE STECKLER: Okay. Mr. Niew, your witness.

24 DIRECT EXAMINATION

25 Q BY MR. NIEW: Caleb, who is your current employer?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 A Needham Excavating.
- 2 Q And how long have you been employed by Needham?
- 3 A Two years as of now.
- 4 Q Can you give a starting month?
- 5 A April of 2019.
- 6 Q And what were your duties in April of '19?
- 7 A A pipe layer and laboring all around.
- 8 Q Are you able to operate any heavy equipment?
- 9 A Yes.
- 10 Q What kind?
- 11 A It would be a roller, a skid loader, a 50, a 27, but
- 12 none of the bigger ones than that.
- 13 Q Did you operate that equipment on any Needham job
- 14 sites?
- 15 A Yes.
- 16 Q Now do you know Adam VanOpDorp?
- 17 A Yes, sir.
- 18 Q How do you know him?
- 19 A He used to work at Needham. Yeah, he used to be my
- 20 operator.
- 21 Q So you worked with him?
- 22 A Yes, 90 percent of the time I was with Adam.
- 23 Q Did you observe Adam talking on the cell phone while
- 24 driving heavy equipment?
- 25 A Yes, almost 90 percent of the time.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q And was that also the month when he left, which would
2 have been in June or July of 2019?

3 A I can't recall when he left, but yes. Yeah.

4 Q Now was there a time that you refused to get in an
5 excavation because Adam was talking on the phone?

6 A No, because at that time I was new, and I didn't want
7 to get in trouble for saying anything.

8 Q Well, let me rephrase the question. Did you tell Adam
9 you were not going to get into the excavation because he was
10 talking on the phone?

11 A No, I did not.

12 JUDGE STECKLER: Did you discuss it with anybody in
13 management?

14 THE WITNESS: I had said something to Curt a long time
15 ago. I can't remember a date. I can't give you a time.
16 But it was said, and I'm pretty sure after that time he had
17 said something to him.

18 JUDGE STECKLER: How do you know that?

19 THE WITNESS: Because he had got -- he had got out of
20 the machine one day and said, well, I can't talk on my phone
21 or I'll be fired, and then pretty much from there is when he
22 was talking about he was going to get fired if he was on his
23 phone.

24 JUDGE STECKLER: Did you ever happen to notice whether
25 he had ear buds in?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: Maybe once or twice, but I can't recall.

2 JUDGE STECKLER: After that morning did you ever see
3 him with the phone?

4 THE WITNESS: Yes.

5 JUDGE STECKLER: Did you report him again?

6 THE WITNESS: No, I did not.

7 JUDGE STECKLER: Why not?

8 THE WITNESS: Because I thought it would be taken care
9 of at that time, and there were other people that I thought
10 had said something. I was new at the time, so I can't
11 really -- you know, he's been there longer. There's
12 seniority there.

13 JUDGE STECKLER: Okay. Thank you, Mr. Hunter. You
14 may continue, Mr. Niew.

15 Q BY MR. NIEW: When you were working with Adam and he
16 was on the cell phone, did you feel unsafe?

17 MR. WILLIAMS: Objection, Your Honor.

18 JUDGE STECKLER: It's kind of leading, Mr. Niew, but
19 you've already sent a telegraph of what the answer should
20 be.

21 Mr. Hunter, did you feel -- we're going to start with
22 that. Did you feel unsafe?

23 THE WITNESS: No. I mean to an extent, no. But at
24 the same time I'm not going to tell him no because we have a
25 job to do.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Okay. And -- I'm going to leave it
2 there. Mr. Niew, you may continue.

3 Q BY MR. NIEW: When working with Adam while he was
4 talking on the cell phone, did you have any other concerns?

5 A The only thing would be when he was swinging and that
6 would be it. Only when he was loading up dump trucks or
7 loading out dirt.

8 Q And what do you mean by swinging?

9 A When you're -- when he's swinging job dirt on the side
10 of the hole. He's not checking his surroundings.

11 Q Do you know a Chad Havill?

12 A Yes, sir.

13 Q Did you ever work with him on any jobs?

14 A Yes, I did.

15 Q Do you remember what jobs you may have worked on?

16 A One was Dan Dolan on 53rd, and one was Christ United,
17 and then Forest Grove.

18 Q As to Chad Havill, did you observe him working?

19 A Yes, I did.

20 Q Did you observe any times when he was not working?

21 A Yes, I did.

22 Q And the times that you observed him not working, was
23 that during normal working hours?

24 A Yes.

25 Q And did Chad Havill -- I withdraw that question.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Mr. Niew, could you please lead a
2 little less except for foundation?

3 Q BY MR. NIEW: Was there a time when you had to take
4 steps to help Chad Havill?

5 A Yeah.

6 JUDGE STECKLER: Mr. Niew, are you -- why are we
7 talking about Chad Havill here?

8 MR. NIEW: Again, to impeach him for his testimony
9 which is different than what this witness is going to say.

10 JUDGE STECKLER: Did we have anything about Mr.
11 Havill's work habits?

12 MR. WILLIAMS: No.

13 MS. LAROSE: No.

14 MR. WILLIAMS: No, we did not, Your Honor.

15 JUDGE STECKLER: That's what I thought.

16 MR. WILLIAMS: So I will object on relevancy grounds

17 JUDGE STECKLER: Mr. Niew, can you explain where this
18 is coming from?

19 MR. NIEW: I agree with counsel. It was not brought
20 up. I withdraw the question. That concludes my questions.

21 JUDGE STECKLER: Mr. Williams?

22 MR. WILLIAMS: Yes.

23 CROSS-EXAMINATION

24 Q BY MR. WILLIAMS: Mr. Hunter, have you seen other
25 employees on the cell phone while they were operating

1 equipment?

2 A Not that I can recall.

3 Q Other than Adam VanOpDorp?

4 A Not while running the machine. No, I cannot say that.

5 Not among those that were running the machines were on their
6 phone.

7 Q And you said when you saw Mr. VanOpDorp on the cell
8 phone, you said you reported it to Curt McKinley?

9 A Yes, that's his name.

10 Q Okay. Do you remember when?

11 A It would have had to have been I want to say three
12 months or four months after I -- three months after I
13 started maybe. I can't give you an exact month.

14 Q Okay.

15 MR. WILLIAMS: I have no further questions, Your
16 Honor.

17 JUDGE STECKLER: Let me jump in here for just a
18 moment.

19 When you reported it to Mr. McKinley, what did he say?

20 THE WITNESS: He said he would handle it, and he would
21 talk -- he would have a talk with him is pretty much what
22 was said.

23 JUDGE STECKLER: You're saying pretty much. Can you
24 recall his exact words?

25 THE WITNESS: That he would have talk with him.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: What if anything else did he say?

2 THE WITNESS: I cannot recall. There was nothing else
3 said after that.

4 JUDGE STECKLER: Did he thank you for giving him a
5 call?

6 THE WITNESS: It was in person.

7 JUDGE STECKLER: Okay. Did he thank you for telling
8 him?

9 THE WITNESS: He said -- I can't recall that. It was
10 back in 2019.

11 JUDGE STECKLER: Okay. So how long was the
12 conversation?

13 THE WITNESS: Maybe two minutes. He had stuff going
14 on. I just told him that he was on his phone and how are we
15 supposed to get work done.

16 JUDGE STECKLER: Okay. Ms. LaRose?

17 MS. LAROSE: Your Honor, if I could just have a
18 minute.

19 JUDGE STECKLER: We'll go off the record for a moment.
20 *(Off the record)*

21 JUDGE STECKLER: We're back on the record. Ms.
22 LaRose?

23 MS. LAROSE: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 Q BY MS. LAROSE: Mr. Hunter, Adam was not on the Forest

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Grove job, was he?

2 A Yes, he was.

3 Q He was not on the Christ Methodist job, was he?

4 A No, Christ United.

5 Q It's Christ United Methodist Church.

6 A Yes.

7 Q You and I are talking about the same job, right?

8 A No, you said -- maybe I misheard you, but it was Christ
9 United in Moline, Illinois.

10 Q Correct. Adam did not work on that job, right?

11 A No, he did.

12 Q The person who performed the majority of the work on
13 that job was Tracey Marshall, wasn't it?

14 A No.

15 Q Tracey is the one who did the basement on that job,
16 right?

17 A I cannot recall that.

18 Q Okay. You didn't work on the Walcott Bank water main
19 break job, right?

20 A No, I did not.

21 Q And you didn't work on Otter Creek Gun Club, right?

22 A No, I did not.

23 MR. NIEW: Your Honor, this is way beyond the scope.

24 JUDGE STECKLER: No, it is not because he's testified
25 that he's worked on all of these projects 90 percent of the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 time with Mr. VanOpDorp, so I think these are projects that
2 Mr. VanOpDorp worked on in that time period. Is that
3 correct, Ms. LaRose?

4 MS. LAROSE: Yes, Your Honor.

5 *(Long pause)*

6 JUDGE STECKLER: Ms. LaRose, do we need to take a
7 break here?

8 MS. LAROSE: No, Your Honor. I'm sorry.

9 JUDGE STECKLER: We've been on the record all this
10 time.

11 MS. LAROSE: I'm sorry, Your Honor. I meant unmute
12 us, and I am no resorting to on the record. I have further
13 questions for this witness.

14 JUDGE STECKLER: Mr. Niew, do you have additional
15 questions?

16 MR. NIEW: No additional.

17 JUDGE STECKLER: Mr. Williams?

18 MR. WILLIAMS: No, Your Honor.

19 JUDGE STECKLER: Mr. Hunger, can you explain -- I'm
20 having to read my notes sideways. When you said that Mr.
21 VanOpDorp wasn't checking his surroundings when he was
22 loading up and unloading his dump trucks, how do you know
23 what he was doing from your perspective?

24 THE WITNESS: From my perspective if you're on a phone,
25 you don't have that much of reaction time to tell if there's

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 something there or not. If you're talking on the phone
2 constantly, how are you supposed to know? If you have
3 earbuds in or if he's just on his phone, he's using one
4 hand. That's not safe.

5 JUDGE STECKLER: Okay. But you testified before that
6 he wasn't checking his surroundings. Can you explain to me
7 how you know that somebody is not checking the surroundings?

8 THE WITNESS: By just swinging. Just turning without
9 even looking around.

10 JUDGE STECKLER: How often did that happen?

11 THE WITNESS: I want to say every time he was on his
12 phone on the job site that I was with him.

13 JUDGE STECKLER: Thank you. Mr. Niew, any additional
14 questions?

15 MR. NIEW: Nothing additional.

16 JUDGE STECKLER: Mr. Williams?

17 MR. WILLIAMS: No, Your Honor.

18 JUDGE STECKLER: Ms. LaRose?

19 MS. LAROSE: No, Your Honor.

20 JUDGE STECKLER: Mr. Hunter, you're about to be
21 excused as a witness. However, we are not sure exactly how
22 long this hearing is going go. During this time period,
23 please do not discuss your testimony with anyone until after
24 the hearing is over. I'm sure you'll hear something about
25 that at the work site. We thank you for coming in this

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 afternoon.

2 THE WITNESS: Thank you.

3 JUDGE STECKLER: Thank you.

4 *(Witness excused)*

5 Let's go off the record for a moment.

6 *(Off the record)*

7 JUDGE STECKLER: We're back on the record. During the
8 short break we discussed what to do tomorrow. Mr. Niew has
9 advised us he has five witnesses tomorrow. We're going to
10 start at 8:30 central and 9:30 eastern. Any other matters
11 before we go off the record for the day?

12 MR. WILLIAMS: No, Your Honor.

13 MR. NIEW: No, Your Honor.

14 MS. LAROSE: No, Your Honor.

15 JUDGE STECKLER: Thank you. We will be off the record
16 for the day. See you at 8:30 in the morning. Thank you.

17 ***[Whereupon, the hearing was adjourned at 5:06 p.m. to reconvene***
18 ***on April 27, 2021 at 8:30 Central.]***

19

20

21

22

23

24

25

CERTIFICATION

1
2
3 This is to certify that the attached proceedings before
4 the National Labor Relations Board (NLRB), in the matter of
5 Needham Excavating, Inc. (Employer) and International Union
6 of Operating Engineers, Local 150 (Petitioner), Case No. 25-
7 CA-239166 et al, on April 26, 2021, was held according to the
8 record, and that this is the original, complete, and true and
9 accurate transcript that has been compared to the recording,
10 at the hearing, that the exhibits are complete and no exhibits
11 received in evidence or in the rejected exhibit files are
12 missing.

13
14
15 *Dave Molinaro*

16 Dave Molinaro, Official Reporter
17
18
19
20
21
22
23
24
25

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case Nos: 25-CA-239166, 25-CA-244670, 25-CA-245763 &
25-RC-243735

NEEDHAM EXCAVATING, INC.,

Respondent,

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL
150, AFL-CIO,

Charging Party.

Place: Video Conference
Date: April 27, 2021
Pages: 780 through 998
Volume: 4 of 4

OFFICIAL REPORTERS

ARS REPORTING
22052 West 66th Street, Suite 314
Shawnee, Kansas 66226
(913) 422-5198

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25

In the Matter of:

NEEDHAM EXCAVATING, INC.,

Respondent,

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150, AFL-CIO,

Charging Party.

Case 25-CA-239166

Nos. 25-CA-244670

25-CA-245763

25-RC-243735

The above-titled matter came on for further hearing via video conference, pursuant to adjournment, before **THE HONORABLE SHARON L. STECKLER, Administrative Law Judge**, National Labor Relations Board, on Tuesday, the 27th of April, 2021, at 8:39 a.m. Central.

A P P E A R A N C E S

On Behalf of the General Counsel:

RAIFAEL WILLIAMS, ESQ.
National Labor Relations Board - Region 25
Minton-Capehart Federal Building
575 North Pennsylvania Street, Room 238
Indianapolis, Indiana 46204
Phone: (317) 991-7630
Fax: (317) 226-5103
E-mail: raifael.williams@nlrb.gov

On Behalf of the Respondent:

STANLEY NIEW, ESQ.
JEFFREY WRIGHT, ESQ.
Law Offices of Stanley E. Niew, P.C.
1000 Jorie Boulevard, Suite 206
Oak Brook, Illinois 60523
Phone: (630) 586-0110
Fax: (630) 586-0120
E-mail: sniew@senlaw.net
jwright@pappaswright.com

ARS REPORTING LLC

22052 West 66th Street, Suite 314
Shawnee, Kansas 66226
Phone: (913) 422-5198

A P P E A R A N C E S

(Continued)

On Behalf of the Charging Party:

ELIZABETH A. LaROSE, ESQ.
JIM CONNOLLY, ESQ.
International Union of Operating Engineers,
Local 150, AFL-CIO, Local 150 Legal Department
6140 Joliet Road
Countryside, Illinois 60525
Phone: (708) 579-6633
Fax: (708) 588-1647
E-mail: elarose@local150.org

Courtroom Deputy:

SONJA SPIELBERG

ARS REPORTING LLC

22052 West 66th Street, Suite 314
Shawnee, Kansas 66226
Phone: (913) 422-5198

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>V/D</u>	<u>COURT</u>
BILL BOUCHARD	788	797 799				800
DAN NEEDHAM	811	836 848	856			849
JOE NEEDHAM	860	870 874	880			878
CURT McKINLEY	883	900 908	912			
NICK NEEDHAM	915	977 980	995		916	

1

2

E X H I B I T S

3

4

EXHIBITSFOR IDENTIFICATIONIN EVIDENCE

5

6

GENERAL COUNSEL

7

6

Previously Marked

932

8

9

CHARGING PARTY/UNION

10

85

980

981

11

86

992

995

12

87

876

914

13

88

983

986

14

15

RESPONDENT/EMPLOYER

16

2

819

927

17

4

Previously Marked

995

18

5

922

Not Offered

19

6

931

975

20

7

932

935

21

8

935

937

22

9

950

953

23

10

953

958

24

11

958

963

25

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Continued)

E X H I B I T S

EXHIBITS **FOR IDENTIFICATION** **IN EVIDENCE**

RESPONDENT/EMPLOYER (Cont'd)

12	964	Not Offered
14	916	919
15	920	921
17	963	963
18	967	970
19	970	Not Offered
20	971	975
21	975	975

P R O C E E D I N G S

[Time Noted: 8:39 a.m.]

1 THE COURT REPORTER: Okay, we are on.

2 THE HONORABLE JUDGE SHARON STECKLER: Thank you.

3 Good morning.

4 This is the fourth day of the hearing in Needham.

5 We spent a little time off the record discussing

6 exhibits.

7 Respondent may call their next witness.

8 MR. NIEW: Respondent calls William Bouchard, Jr.

9 JUDGE STECKLER: Mr. Bouchard, can you please raise
10 your right hand?

11 (Whereupon,

12 WILLIAM BOUCHARD, JR.

13 having been sworn/affirmed, was called as a witness

14 herein, and was examined and testified via video-

15 conference, as follows:)

16 JUDGE STECKLER: Please state your name and spell it
17 for the record.

18 THE WITNESS: William Thomas Bouchard; B-o-u-c-h-a-r-
19 d, Jr.

20 JUDGE STECKLER: Mr. Bouchard, are you in a room by
21 yourself?

22 THE WITNESS: Yes, ma'am.

23 JUDGE STECKLER: Is the door open or shut?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: *[No response]*

2 JUDGE STECKLER: Is the door open or shut?

3 MR. CONNOLLY: He is frozen, Judge.

4 JUDGE STECKLER: Okay. Everybody on the Respondent's
5 side is frozen.

6 Let's go off the record and fix.

7 *[Off the record]*

8 JUDGE STECKLER: Just a note for the record, the
9 Respondent's office has been kicked off the internet, and
10 we received an e-mail from Mr. Wright that they are trying
11 to join us as soon as possible, but in the meantime, we
12 are going to be sitting tight, so we are going back off
13 the record.

14 Thank you.

15 *[Off the record]*

16 THE COURT REPORTER: We are on.

17 JUDGE STECKLER: Thank you.

18 Mr. Bouchard, I will just warn you, and you had said
19 that there was no one in the room with you. I was asking
20 whether the door was open or shut.

21 THE WITNESS: The door is shut, Your Honor.

22 JUDGE STECKLER: Thank you, and do you have any
23 papers in front of you?

24 THE WITNESS: No, Your Honor.

25 JUDGE STECKLER: How were you notified to appear

1 today?

2 THE WITNESS: A text message.

3 JUDGE STECKLER: From whom?

4 THE WITNESS: From Curt McKinley.

5 JUDGE STECKLER: Okay. Did you receive a subpoena of
6 any sort?

7 THE WITNESS: Yes, ma'am.

8 JUDGE STECKLER: Who sent out the subpoena?

9 THE WITNESS: I believe it came from Stanley.

10 JUDGE STECKLER: Mr. Niew?

11 THE WITNESS: Yes.

12 JUDGE STECKLER: When did you receive that subpoena?

13 THE WITNESS: I believe a week or two ago.

14 JUDGE STECKLER: And have you discussed your
15 testimony with anyone?

16 THE WITNESS: Not in the last few weeks, no. Since I
17 had the subpoena, no.

18 JUDGE STECKLER: How about before that?

19 THE WITNESS: I had a phone conversation with Mr.
20 Niew and

21 JUDGE STECKLER: Okay. Thank you.

22 Your witness, Mr. Niew.

23 DIRECT EXAMINATION

24 Q BY MR. NIEW: Who are you currently employed by?

25 A I lost part of that, Mr. Niew.

- 1 Q Who are you currently employed by?
- 2 A Summit Concrete, Bettendorf, Iowa.
- 3 Q And how long have you been employed there?
- 4 A Just about a year and a half.
- 5 Q Were you an employee of Needham Excavating, at any
- 6 time?
- 7 A Yes, sir.
- 8 Q Were you an employee of K & K at any time?
- 9 A Yes, sir.
- 10 Q I assume you left Needham Excavating?
- 11 A Yes, sir.
- 12 Q Were you fired?
- 13 A No, sir.
- 14 Q Under what circumstances did you leave?
- 15 A *[No response]*
- 16 Q Let me withdraw that question.
- 17 Why did you leave?
- 18 A I left Needham Excavating because it was just a big
- 19 hassle.
- 20 Q What does that mean?
- 21 A Constantly being followed or having your picture
- 22 taken, or people watching over your back all of the time.
- 23 Q Do you know who was taking your pictures?
- 24 A Yeah, the Local 150 representatives.
- 25 Q And when you say somebody was following you, do you

- 1 know who was following you?
- 2 A I don't know by names.
- 3 Q Did you recognize the vehicles?
- 4 A Yeah, little black cars with tinted windows and
- 5 Illinois license plates.
- 6 Q Now, when you were with K & K, what did you do?
- 7 A Mechanic.
- 8 Q Can you be more specific? What did you do -- was it
- 9 a shop, for example?
- 10 A Yes, I ran the shop in the beginning.
- 11 Q And who did you report to?
- 12 A Basically any of the boys that would text me and say
- 13 something was broke.
- 14 Q You say "the boys."
- 15 A Joe, Nick, Curt, Boo, or Daniel.
- 16 Q And that is the three Needhams, that you are
- 17 referring to?
- 18 A Yes, sir.
- 19 Q And Curt would be Curt McKinley?
- 20 A Yes, sir.
- 21 Q Did you have occasion when you were at K & K, to go
- 22 to the jobsites?
- 23 A Yes, sir.
- 24 Q Do you have an estimate of how often you would go to
- 25 the jobsites?

1 A In what time -- are you referring to in any one week,
2 month?

3 Q Whatever is easier for you to answer; one month, in a
4 week --

5 A In a week, I would go probably sixty percent of the
6 time. It --

7 Q And -- I'm sorry, finish your statement.

8 A It would depend on how many days of the week we were
9 running, and where we were running.

10 Q When you got to the jobsites, what would you do?

11 A Well, we would try to evaluate the equipment and see
12 what was wrong with it so we could repair it.

13 Q And after you repaired the equipment, what would you
14 do?

15 A Verify the repair.

16 Q How would you do that?

17 A Well, if I didn't have an operator standing by, I
18 would have to do it myself.

19 Q What does that mean? Do -- do what yourself?

20 A Run the piece of equipment. Operate it.

21 Q And how long would it -- is there an average time
22 that you would operate the equipment?

23 A Anywhere from a half an hour to an hour.

24 Q Now, again, while you were still at K & K, when you
25 would go back to the shop, what would you do, if anything?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A I would fill out the work order and put it into the
2 computer and then send it out to the front office.

3 Q And was there a name for that -- for after the work
4 order was done, for the document that was produced?

5 A A name? I don't understand that question.

6 Q Okay. You did a work order. Was the work order
7 converted into like some other document?

8 A It would be converted from the work order to a bill.

9 Q Is that the same as an invoice?

10 A As an invoice, yes, sir.

11 Q And what would you do with that invoice, if anything?

12 A It would be turned into the front office.

13 Q And who would turn it in?

14 A Either myself would take it up front, or one of the
15 ladies would come back and get them.

16 Q And when you would take it up front, was there a
17 particular person you would give it to?

18 A Not normally.

19 Q Was there --

20 A There was an in-box for them.

21 Q When -- at some point in time and K & K and NEI,
22 Needham Excavating, Inc., merged. Do you recall that?

23 A Yes, sir.

24 Q Do you know why there was a merger?

25 A I believe it was because Joe bought the place.

1 Q When you became employed from Needham Excavating, did
2 your work duties change in any way?

3 A None whatsoever.

4 Q When you became employed from Needham Excavating, did
5 -- did you report to the same people that you described
6 before?

7 A Yes, sir.

8 Q Now, do you know Adam VanOpDorp?

9 A Yes, sir.

10 Q How do you know him?

11 A He was one of the operators.

12 Q And would you see him on jobsites?

13 A Occasionally.

14 Q And when you saw him on jobsites, did you ever see
15 him talking on his cellphone and operating a vehicle?

16 A Occasionally.

17 Q Did you report that to anyone?

18 A No, sir.

19 Q Now, do you remember where you were on July 8th,
20 2019, in the afternoon?

21 A Probably at our shop.

22 Q Do you recall seeing Adam at the shop that day?

23 A Since I don't have my paper in front of me, if you
24 are referring to the fact that, yeah, we had a pickup
25 truck in there, and we would empty it out, yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 Q That's the one I am referring to.
- 2 A Okay.
- 3 Q Now, describe who was with you emptying up --
- 4 emptying the pickup truck?
- 5 A Curt McKinley, later on followed by Nick Needham.
- 6 Q Now, approximately how long were you with Adam when
- 7 the truck was being emptied?
- 8 A Thirty minutes, maybe.
- 9 Q I want to just clarify something...
- 10 When you refer to emptying a truck, whose truck was
- 11 that?
- 12 A I believe it was Adam's.
- 13 Q And do you recall what, if anything, Adam said while
- 14 you were emptying the truck?
- 15 A He made mention of the fact when Curt McKinley came
- 16 out to help empty the truck, that if they were -- if he
- 17 wanted to play them games, then he should check everyone
- 18 else's timecards.
- 19 Q Did he say that more than once?
- 20 A Approximately three times.
- 21 Q Who else heard that?
- 22 A I am not sure if Nick was present at the time or not.
- 23 Q Was Curt present?
- 24 A Yes, sir.
- 25 Q Now, do you know a Brett Gripp?

- 1 A Yes, sir.
- 2 Q And how did you know him?
- 3 A He was a truck driver.
- 4 Q And did you ever see him on jobsites?
- 5 A Occasionally.
- 6 Q And what was he -- what was Brett doing when you saw
- 7 him on a jobsite, if anything?
- 8 A Either sitting in his truck or driving it.
- 9 Q Did you observe Brett driving his truck?
- 10 A Occasionally.
- 11 Q Did you have -- were you sitting -- when you say
- 12 occasionally, how often?
- 13 A Maybe once a week. It depends on the jobsite.
- 14 Q Did you ever make any comments as to Brett Gripp's
- 15 driving skills?
- 16 A Sure. I called him a "steering wheel jockey."
- 17 Q And why is that?
- 18 A He liked to drive fast, or he wouldn't slow down on
- 19 jobsites.
- 20 MS. LaROSE: Objection.
- 21 JUDGE STECKLER: What is the objection?
- 22 MS. LaROSE: Your Honor, I will withdraw it. I'm
- 23 sorry.
- 24 JUDGE STECKLER: Go ahead, Mr. Niew.
- 25 Q BY MR. NIEW: Did you ever see Brett Gripp operating

1 any heavy equipment?

2 A No, sir.

3 Q Now, when you were in the employ of K & K and/or
4 Needham Excavating, did you ever hear of Needham's
5 management either threaten any employee with discipline
6 for supporting the Union, or offering any perks to vote
7 against the Union?

8 A No, sir.

9 Q Did you hear of any sort of threats from the Needham
10 management with respect to any Union supporters?

11 A No, sir.

12 Q Do you know who the Union supporters were?

13 A I believe so.

14 Q And who do you believe -- believed to be a Union
15 supporter?

16 A Adam -- Adam and, I can't remember the other guy's
17 name, the young kid.

18 MR. NIEW: Your Honor, may I have one minute to
19 discuss with my co-Counsel, to see if I missed anything?

20 JUDGE STECKLER: Yes, we will go off the record for a
21 moment, please.

22 *[Off the record]*

23 THE COURT REPORTER: We are on.

24 JUDGE STECKLER: Back on the record.

25 Mr. Niew?

1 Q BY MR. NIEW: Now, you referred to a young kid.
2 Could that have been Spencer?

3 A Yes, sir.

4 Q Do you remember his last name at all?

5 A Werthmann, I believe.

6 MR. NIEW: No further questions.

7 JUDGE STECKLER: Mr. Williams?

8 MR. WILLIAMS: Yes, thank you.

9 CROSS EXAMINATION

10 Q BY MR. WILLIAMS: Mr. Bouchard, you testified that
11 you saw Adam VanOpDorp operating -- on the cellphone while
12 he was operating equipment. Do you remember when that
13 was?

14 A The exact date, no, sir.

15 Q Do you remember the year?

16 A It could have been 2018, 2017.

17 Q Okay.

18 A 2015.

19 Q Okay, fair enough.

20 And you also testified that you didn't report it to
21 management, right?

22 A No, sir.

23 Q No, you didn't report it, correct?

24 A No, I did not report it.

25 Q Okay. And you also testified that you saw Brett

1 Gripp driving fast. Do you remember when that was?

2 A I can't give you an exact date, sir.

3 Q Okay. Can you give me a year?

4 A Not really. It could have been any of the time that
5 I was there.

6 Q Okay, and did you report it to management?

7 A No, sir.

8 Q Okay, and have you seen other employees on cellphones
9 while they were operating equipment during your employment
10 with Needham Excavating, Inc.?

11 A I have seen one other employee on a dozer on a
12 cellphone, but the dozer was stopped, and he was
13 discussion his operation of the jobsite. I was working on
14 the dozer.

15 Q So that is the only other situation that you can
16 recall where you saw someone on their cellphone while they
17 were operating a piece of equipment?

18 A Yes, sir.

19 Q Do you remember when that was?

20 A No, sir.

21 Q Okay.

22 MR. WILLIAMS: I have no further questions, Your
23 Honor.

24 Thank you.

25 JUDGE STECKLER: Ms. LaRose?

1 MS. LaROSE: May I have a minute, Your Honor?

2 JUDGE STECKLER: Yes, off the record.

3 *[Off the record]*

4 THE COURT REPORTER: We are on the record.

5 JUDGE STECKLER: Thank you.

6 Ms. LaRose, any cross?

7 MS. LaROSE: Yes, Your Honor.

8 Thank you.

9 CROSS EXAMINATION

10 Q BY MS. LaROSE: Mr. Bouchard, for liability reasons,
11 it is best if there is an experienced operator running the
12 equipment, right?

13 A Say that again, ma'am?

14 Q Sure. For liability reasons, it is best if there is
15 an experienced operator running the equipment, right?

16 MR. NIEW: Objection, foundation.

17 JUDGE STECKLER: He has expressed that he is an
18 experienced mechanic.

19 Mr. Bouchard, can you answer that question, please?

20 THE WITNESS: If my understanding is correct, is she
21 trying to imply that you need to be an experienced
22 operator to test the equipment, because the mechanic is
23 not as --

24 MS. LaROSE: Objection and move to strike the
25 witness' rephrasing of the question.

1 I will put it to you again, Mr. Bouchard.

2 Q BY MS. LaROSE: For liability reasons, it is best if
3 an experienced operator is running the equipment, is that
4 correct?

5 A I would assume so, yes.

6 Q And this merger between K & K and Needham Excavating,
7 when did that take place?

8 A I do not have the exact date in my head.

9 Q Do you have a year?

10 A Not exactly, no; 2016, maybe. I am not sure.

11 Q Okay. And you don't know, because nothing really
12 changed, right?

13 A Explain.

14 Q You don't know what year it happened because nothing
15 about your work environment really changed; right?

16 A Right.

17 MS. LaROSE: Those are all of my questions, Your
18 Honor.

19 JUDGE STECKLER: Mr. Bouchard, I am afraid I have got
20 to ask you a few questions. It is my job to make sure the
21 record is clear, so -- and so that I have sufficient
22 information to make a decision here.

23 EXAMINATION BY THE COURT

24 JUDGE STECKLER: You said you are now working for a
25 company in Bettendorf; is that correct?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: Yes, Your Honor.

2 JUDGE STECKLER: Is that closer to your home than --
3 than the other -- than your employment at Needham
4 Excavating, Inc. and K & K?

5 THE WITNESS: Yes, Your Honor.

6 JUDGE STECKLER: What were you making when you left
7 NEI or K & K?

8 THE WITNESS: A -- as a base salary; is that what you
9 are asking?

10 JUDGE STECKLER: Yes.

11 THE WITNESS: I was salary, ma'am.

12 JUDGE STECKLER: You were salaried, okay.

13 And how much were you making?

14 THE WITNESS: I believe approximately \$75,000 a year,
15 \$80,000.

16 JUDGE STECKLER: And how much are you making now?

17 THE WITNESS: Approximately \$90,000.

18 JUDGE STECKLER: So it -- so that is better than what
19 you were doing at either Needham and/or K & K; is that
20 correct?

21 THE WITNESS: Not necessarily.

22 JUDGE STECKLER: You would say \$75,000 is better than
23 \$90,000? Is that what you are telling me?

24 THE WITNESS: No, Your Honor. That is not what I am
25 telling you.

1 JUDGE STECKLER: Then please enlighten me. Why --
2 why is this not as good as what you were doing at Needham
3 and K & K?

4 THE WITNESS: Because of the medical benefits. I had
5 pretty much run of what I wanted to do there, and I
6 happened to enjoy being there.

7 JUDGE STECKLER: Okay. Well, you were talking about
8 you thought cars were following you; is that correct?

9 THE WITNESS: Yes, Your Honor.

10 JUDGE STECKLER: It was tinted windows, is that
11 correct?

12 THE WITNESS: Yes.

13 JUDGE STECKLER: How far away were they when you
14 noticed them?

15 THE WITNESS: As in them following?

16 They would leave the parking lot when we left.

17 JUDGE STECKLER: Ahh, okay. So you would notice them
18 at NEI/K & K?

19 THE WITNESS: Yes.

20 JUDGE STECKLER: Okay, do you know of anybody else
21 that had cars that looked like that?

22 THE WITNESS: No, Your Honor.

23 JUDGE STECKLER: The tinted windows, were you able to
24 see who was inside?

25 THE WITNESS: No, Your Honor.

1 JUDGE STECKLER: How were you able to identify the
2 cars, then?

3 THE WITNESS: Because they parked out front of the
4 NEI's office buildings. They parked caddy-corner from us
5 in our parking lots.

6 JUDGE STECKLER: Did the car ever try to run you off
7 the road?

8 THE WITNESS: No, Your Honor.

9 JUDGE STECKLER: Were you personally ever -- in the
10 election in 2019, were you ever approached by Union
11 representatives?

12 THE WITNESS: No, Your Honor.

13 JUDGE STECKLER: Okay, you -- Ms. LaRose just asked
14 you about when you learned about the merger between K & K
15 and NEI, and you said Joe bought the place. How did you
16 learn about that?

17 THE WITNESS: I believe I asked him.

18 JUDGE STECKLER: You asked him? Okay. What made --
19 what prompted you to ask him?

20 THE WITNESS: Curiosity.

21 JUDGE STECKLER: What raised your curiosity, Mr.
22 Bouchard?

23 THE WITNESS: Rumors.

24 JUDGE STECKLER: Who were you hearing rumors from?

25 THE WITNESS: Other employees.

1 JUDGE STECKLER: What were they saying?

2 THE WITNESS: The same -- same as everybody.
3 Wondering what was going to happen if K & K was still
4 going to exist, or if we had a job or not.

5 JUDGE STECKLER: Did you hear anything about a
6 relationship to Mr. Nick Needham's divorce?

7 THE WITNESS: Say again, Your Honor?

8 JUDGE STECKLER: Did you hear any rumors about a
9 relationship of Joe buying it due to Nick Needham's
10 divorce?

11 THE WITNESS: I would believe that is where it would
12 be bought from, yes.

13 JUDGE STECKLER: Okay, so it was -- so you believe it
14 was bought from the ex-wife?

15 THE WITNESS: Yes.

16 JUDGE STECKLER: Okay. You were talking about a July
17 incident where Adam's truck was being cleared out. Can
18 you give any more details about what happened? How did it
19 start? What did you see?

20 THE WITNESS: It started by Adam bringing the truck
21 into the back welding shop and I was asked to -- if I had
22 a problem -- if I would help clean out the truck.

23 JUDGE STECKLER: Who asked you?

24 THE WITNESS: Curt McKinley.

25 JUDGE STECKLER: Okay, and then what happened?

1 THE WITNESS: I went to help clean out the truck.

2 JUDGE STECKLER: Okay, what kinds of things did you
3 find in the truck?

4 THE WITNESS: Company-owned tools.

5 JUDGE STECKLER: Besides that, anything else?
6 Cigarettes, cellphone...

7 THE WITNESS: Well, yeah. Cigarette butts, cigarette
8 packs. His cellphone, but...

9 JUDGE STECKLER: Okay.

10 THE WITNESS: Garbage in the back of the truck.

11 JUDGE STECKLER: Okay, do you clean out the garbage
12 that was --

13 THE WITNESS: Oh, we cleaned the entire truck out.

14 JUDGE STECKLER: Okay.

15 THE WITNESS: Toolbox, fuel tank...

16 JUDGE STECKLER: Are you saying you drained the fuel
17 out?

18 THE WITNESS: No, Your Honor. It has a tank to fuel
19 the equipment at night. It belonged to Needham
20 Excavating.

21 JUDGE STECKLER: Okay, thank you for clarifying that
22 for me.

23 Did -- what -- what happened while you were cleaning
24 things out? So Curt McKinley was out there with you at
25 that point?

1 THE WITNESS: Yes, Your Honor.

2 JUDGE STECKLER: Anybody else?

3 THE WITNESS: Not in the beginning, Your Honor.

4 JUDGE STECKLER: Okay.

5 THE WITNESS: Nick came out at a later time period,
6 but I couldn't tell you when.

7 JUDGE STECKLER: Okay, and so, were you talking to
8 Curt during this time, or --

9 THE WITNESS: No, Your Honor.

10 JUDGE STECKLER: You were just cleaning things out?

11 THE WITNESS: Yes, Your Honor.

12 JUDGE STECKLER: And Curt was there -- was he
13 supervising or was he back in the building?

14 THE WITNESS: He was there supervising.

15 JUDGE STECKLER: Okay. But he wasn't helping you at
16 all; is that -- am I understanding that correctly?

17 THE WITNESS: No, no, no. He would help on the big
18 stuff.

19 JUDGE STECKLER: Okay. What, if anything, did Curt
20 tell you about why you were cleaning out Adam's truck?

21 THE WITNESS: He didn't.

22 JUDGE STECKLER: So -- so do you clean out
23 everybody's truck on a regular basis?

24 THE WITNESS: No, Your Honor. When -- I was asked to
25 help clean it out, but not -- when I was told that he was,

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 I guess you would say, fired.

2 JUDGE STECKLER: Okay, so Curt --

3 THE WITNESS: I had a problem with it.

4 JUDGE STECKLER: So, Curt told you that before you
5 started cleaning out the truck?

6 THE WITNESS: Yes.

7 JUDGE STECKLER: Now -- so you are cleaning out the
8 truck and Mr. Nick Needham comes out at some point; is
9 that correct?

10 THE WITNESS: Yes.

11 JUDGE STECKLER: Okay, what happened when Mr. Needham
12 came out?

13 THE WITNESS: Pretty much nothing.

14 JUDGE STECKLER: Did he say anything to you?

15 THE WITNESS: Nick?

16 JUDGE STECKLER: Yes, sir.

17 THE WITNESS: No.

18 JUDGE STECKLER: Okay, so you are continuing to clean
19 out. At what point did Mr. VanOpDorp come out?

20 THE WITNESS: Say that again, Your Honor?

21 JUDGE STECKLER: At what point in this thirty minutes
22 when you are cleaning out the truck, did Mr. VanOpDorp
23 come out?

24 THE WITNESS: Mr. VanOpDorp was there the whole time
25 with the truck.

1 JUDGE STECKLER: Oh, I see.

2 Did he say anything to you when he came out at first?

3 THE WITNESS: No, Your Honor.

4 JUDGE STECKLER: Did he talk to Curt?

5 THE WITNESS: When Curt came out to assist and
6 supervise, yes. That is when he made mention of the fact
7 that if we was going to play this game, we should check
8 everybody's timecards.

9 JUDGE STECKLER: Okay. Was Mr. Needham present when
10 those statements were made?

11 THE WITNESS: I can't remember, Your Honor.

12 JUDGE STECKLER: Okay. Let me see.

13 Are you a smoker, Mr. Bouchard?

14 THE WITNESS: Yes, Your Honor.

15 JUDGE STECKLER: How much do you smoke a day?

16 THE WITNESS: Oh, a pack and a half.

17 JUDGE STECKLER: Do you smoke in your truck?

18 THE WITNESS: In my personal vehicle, yes.

19 JUDGE STECKLER: Do you smoke in any other vehicles?

20 THE WITNESS: No, Your Honor.

21 JUDGE STECKLER: Do you smoke -- smoke in the shop?

22 THE WITNESS: Yes, Your Honor.

23 JUDGE STECKLER: Is there a hazard with smoking in
24 the shop near flammable equipment?

25 THE WITNESS: I am an adult, Your Honor. I don't

1 smoke near flames or flammable equipment.

2 JUDGE STECKLER: Okay.

3 THE WITNESS: I have one area in the shop to smoke
4 at, and that is usually by an open door.

5 *[Long pause]*

6 JUDGE STECKLER: Mr. Niew, do you have additional
7 questions?

8 MR. NIEW: I do not.

9 JUDGE STECKLER: Mr. Williams?

10 MR. WILLIAMS: No further questions, Your Honor.

11 JUDGE STECKLER: Ms. LaRose?

12 MS. LaROSE: None.

13 JUDGE STECKLER: Okay, Mr. Bouchard, you are about to
14 be excused as a witness, however you may be recalled at
15 some point.

16 Please do not discuss your testimony with anyone
17 until after this hearing is over, and thank you for coming
18 in this morning.

19 THE WITNESS: Thank you, Your Honor.

20 JUDGE STECKLER: Okay, you can click out of your
21 screen, and you can leave.

22 THE WITNESS: Thank you.

23 JUDGE STECKLER: Thank you.

24 *[Witness excused]*

25 JUDGE STECKLER: Respondent can get its next witness

1 while we are off the record.

2 *[Off the record]*

3 THE COURT REPORTER: Okay, we are on.

4 JUDGE STECKLER: Respondent may call its next
5 witness.

6 MR. NIEW: Next witness is Daniel Needham.

7 JUDGE STECKLER: Mr. Needham, I am going to have you
8 raise your right hand.

9 (Whereupon,

10 **DANIEL NEEDHAM**

11 having been sworn/affirmed, was called as a witness
12 herein, and was examined and testified via video-
13 conference, as follows:)

14 JUDGE STECKLER: Would you please state your name for
15 the record.

16 THE WITNESS: Daniel Needham.

17 JUDGE STECKLER: Mr. Needham, can you spell your name
18 for us, please?

19 THE WITNESS: D-a-n-i-e-l, N-e-e-d-h-a-m.

20 JUDGE STECKLER: Are you in a room by yourself?

21 THE WITNESS: Yes.

22 JUDGE STECKLER: Is the door open or shut?

23 THE WITNESS: Shut.

24 JUDGE STECKLER: Do you have any documents or papers
25 in front of you?

1 THE WITNESS: No.

2 JUDGE STECKLER: Have you discussed your testimony
3 with anyone?

4 THE WITNESS: No.

5 JUDGE STECKLER: Never?

6 THE WITNESS: I went -- not this -- just to look at
7 stuff that's kind of made known to myself.

8 JUDGE STECKLER: Okay, when was that?

9 THE WITNESS: This morning.

10 JUDGE STECKLER: Okay. Mr. Niew, your witness.

11 DIRECT EXAMINATION

12 Q BY MR. NIEW: Mr. Needham, who are you currently
13 employed by?

14 A Needham Excavating.

15 Q And I am going to call you Dan to speed this up, if
16 you don't mind.

17 A Okay.

18 Q Dan, when did you start to work for Needham
19 Excavating?

20 A Officially about nineteen years ago.

21 Q And about how old were you?

22 A Eighteen.

23 Q And what was your first job?

24 A Operator.

25 Q And how did you get trained?

- 1 A My father.
- 2 Q And how long did you work as an operator?
- 3 A I still do.
- 4 Q So, it continued for the last nineteen years?
- 5 A Yes.
- 6 Q And do you have a current position or title today?
- 7 A Project Manager.
- 8 Q And how long have you held that position?
- 9 A Like nineteen years.
- 10 Q I'm sorry?
- 11 A Roughly nineteen years.
- 12 Q Are you able to hire or fire or discipline?
- 13 A Yes.
- 14 Q How long have you had that responsibility?
- 15 A For nineteen years.
- 16 Q Is there a phone policy while driving heavy equipment
- 17 at Needham Excavating?
- 18 A Yes, there is.
- 19 Q And can you tell -- tell me what that policy is?
- 20 A Yes, if you get a phone call, then you just need to
- 21 safely stop operating machinery and -- and finish your
- 22 phone call, and then once the phone is down, then you can
- 23 go back to work.
- 24 Q Is that a verbal policy?
- 25 A Yes.

1 Q How is it communicated to employees?

2 A All of our employees are instructed when they are
3 hired, and there are several reminders throughout the
4 years.

5 Q Do you know Adam VanOpDorp?

6 A Yes, I do.

7 Q How do you know him?

8 A He used to be employed with us, and he was an
9 operator for us.

10 Q And did you ever have any conversations with Adam
11 with respect to phone usage while driving a machine?

12 A Yes, multiple occasions.

13 Q Do you remember the last occasion you did?

14 A It would have been the spring of '19.

15 Q And where were you at the time?

16 A Probably -- I think it was Cubby Park.

17 Q And what did you say to Adam, and what did he say
18 back to you?

19 A I said, "Adam, you got to stay off the phone when you
20 are working, when you are running machinery," and he just
21 kind of shrugged his shoulders, "Okay."

22 Q Did you threaten him with firing if he didn't?

23 A No, I did not.

24 Q Did you ever start hearing complaints from other
25 employees about Adam's habit of talking on the phone while

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 excavating?

2 A Yes. Pretty much every employee that we have on
3 staff.

4 Q Do you remember any particular names of employees?

5 A Jason Faulcks, Jeremiah Shoemaker, Chad Havill, Dave
6 Bazan, a bunch of laborers. I am drawing blanks.

7 Q Well, let's talk about --

8 A Bryce Long.

9 Q Well, let's talk about Jason Faulcks. What do you
10 remember him telling you, and when?

11 A This would have been throughout Jason's employment
12 from -- from around '17, '18, or '19. Jason said he
13 doesn't feel comfortable with him in the ditch, when Jason
14 is in the ditch, when Adam was on his phone. He thought
15 he was a safety hazard.

16 Q Do you remember any other conversations with any
17 other particular employees?

18 A Yes. Bryce Long, up at -- it was a project for 3M in
19 Knoxville, Iowa.

20 We were doing a storm sewer and we were seven or
21 eight foot deep, and Adam was on his phone, and Bryce came
22 up to me, made me aware of it, and told me that he did not
23 feel safe in the ditch.

24 Then I had a conversation with Adam and told him to
25 stay off of it, and he then stayed off of it for a little

1 bit.

2 Q Did you ever hear from any other employees, that you
3 can recall?

4 A Off the top of my head, Dave Pazan complained about
5 it. Like I said, multiple employees have throughout the
6 years.

7 Q And that was David B-a-z-a-n; would that be correct?

8 A Yes.

9 Q And what do you recall David saying to you?

10 A Same thing. He just didn't feel comfortable with
11 Adam holding his phone like this *[demonstrating]*, and
12 trying to dig when he was right next to him.

13 JUDGE STECKLER: Mr. Needham, you would consider that
14 not safe; is that correct?

15 THE WITNESS: Yes.

16 JUDGE STECKLER: Okay, thank you.

17 Continue, Mr. Niew.

18 MR. NIEW: Thank you.

19 Q BY MR. NIEW: Operators such as Adam were required to
20 order material so they don't run out.

21 A Yes.

22 Q Do you know if Adam followed that policy religiously?

23 A I know he did not.

24 Q And do you remember any particular job that he didn't
25 follow the policy?

1 A Yes, it was Northwest Pointe in Davenport. After
2 Adam was terminated, we went back there and we had to wait
3 over two hours to get materials that we needed on site,
4 because he ran himself out of material before he left.

5 JUDGE STECKLER: Mr. Needham, that was not a basis
6 for terminating him, was it?

7 THE WITNESS: Pardon me?

8 JUDGE STECKLER: To your knowledge, that was not a
9 basis for terminating Mr. VanOpDorp, was it?

10 THE WITNESS: No. Well, it played part of it.

11 JUDGE STECKLER: But if you didn't know at that time,
12 how could it have been part of it?

13 THE WITNESS: No, on that specific job, no, we did
14 not know. I learned that after the fact.

15 JUDGE STECKLER: Okay, so was this a consistent
16 problem with Mr. VanOpDorp?

17 THE WITNESS: Yes, especially when ordering trucks.
18 Like if we needed a truck for a load of rock or sand, we
19 need to order that -- tell somebody at least the day
20 before, and --

21 JUDGE STECKLER: Okay, well, let me ask you this
22 then.

23 How long had that been going on?

24 THE WITNESS: It got worse in the spring of '19. It
25 has gone on for a little bit, for a couple years, but it

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 definitely got worse in the spring of '19.

2 JUDGE STECKLER: Okay. Mr. Niew, you can continue.

3 Q BY MR. NIEW: Was there a company policy with respect
4 to greasing and oiling machines at the end of the day?

5 A Yes.

6 Q What was that policy?

7 A Every machine that ran that day needed to be fueled
8 and greased, and ready to be worked for a ten-hour day.

9 Q Did Adam fulfill that obligation, to your knowledge?

10 A Not very consistently. It was a common problem. We
11 would get there and the machine wasn't full, or it was not
12 greased.

13 Q Did you ever talk to Adam about that?

14 A Yes. He always come up with some lame excuse. "I
15 had to go get my kids." "I had to go do this." "I didn't
16 have fuel."

17 Q Do you remember a specific time or two that you spoke
18 to him about that obligation?

19 A Well, going back to the -- the -- the winter of '19,
20 and throughout the spring of '19 for sure.

21 Q Do you remember an 11th Street project in Moline?

22 A Yes, I do.

23 Q And can you tell me your involvement in that project?

24 A I was in charge of Phase 2 of that project.

25 Q What was Phase 1?

1 A Phase 1 was in the summer of '18. It was a street
2 project, complete sewer, storm sewer, and water
3 replacement and street replacement.

4 Q And what was Phase 2?

5 A The same thing, just to the south of that. It was in
6 front of a school, so we could only do half of it at a
7 time, when school was out.

8 Q What was Adam's job at the 11th Street project?

9 A He was the lead man on Phase 1. He was in charge of
10 all of the grades, ordering everything, making sure
11 everything was ready to go, and that everything was done
12 properly.

13 Q Did you ever learn about any error or omission of
14 Adam on the 11th Street project?

15 A Yes, I learned -- I think it was July 8th of '19,
16 after I got the sanitary sewer on the piece that he
17 stubbed out for the manhole for Phase 2, I had four inches
18 of backfall. So I had to have a company come in and cut -
19 - recut the street farther back than what we were supposed
20 to and fix the pipe and get it up to grade.

21 Q Okay.

22 A And he also forgot to lay tracer wire with the water
23 main, and we had a big back-up to get tied on to.

24 Q In the history of your working for Needham
25 Excavating, did you ever hear of a similar error or

1 omission the magnitude of the 11th Street project?

2 A No.

3 Q And have you ever heard of an operator error or
4 omission which was more than eight hours long?

5 A No.

6 Q I would like to hand you, or I would like to put up
7 on the screen Respondent's Exhibit 2, if I may.

8 JUDGE STECKLER: Please.

9 **(Respondent's Exhibit 2, marked for identification.)**

10 *[Long pause]*

11 Q BY MR. NIEW: Did you have a chance to look at the
12 exhibit which was Respondent's Exhibit 2(a) through 2(g)?

13 A Yes.

14 Q Did you take those photos?

15 A Yes.

16 Q And when did you take them?

17 A July 8th of 2019.

18 Q Can you tell us what each picture depicts, beginning
19 with 2(a)?

20 A Yes, this is a company we hired to come and saw cut
21 the concrete streets that we needed out in order to fix
22 this pipe, fix the pipe with backfall on it.

23 Q And what is Exhibit R-2(b)?

24 A That is the machine to jackhammer the street,
25 jackhammer concrete so we can get to the manhole.

1 Q Going through R-2(c); what does that show?

2 A That is us beating down through a manhole where the
3 pipe is at, so we can raise it and reset it.

4 Q And what is R-2(d)?

5 A That is the manhole that Adam did in Phase 1, and
6 stuffed the sanitary sewer out to the south with that 20-
7 foot piece that had backflow on it.

8 JUDGE STECKLER: Mr. Niew --

9 MS. LaROSE: Your Honor, I -- these are the (a), (b),
10 (c), (d), we don't have a copy with these (a), (b), (c),
11 (d)'s on them. I am not sure when these got marked with
12 the letters. I would just ask if Mr. Niew could please
13 zoom out so that we can see the exhibit number at the
14 bottom of the page, and we know what he is referring to.

15 MR. WRIGHT: Judge, if I may just clarify, and I can
16 zoom out.

17 As I had mentioned yesterday, I was going to go in
18 and re-Bates stamp our prior group Exhibit 2, and also
19 group Exhibit 4, and that is what I have done. I have not
20 been able to get back into SharePoint. I can e-mail these
21 to the parties, and then I can obviously work to get them
22 into SharePoint with our Tech Support.

23 But these are the same documents that had been
24 uploaded to SharePoint previously and in the same order.
25 They just now have the (a), (b), (c), (d) designations.

1 MS. LaROSE: Your Honor, there is no confusion about
2 what order. I would just prefer that if we are making
3 reference to a particular page by a letter, that the
4 letter be visible on the screen. That is all.

5 JUDGE STECKLER: So what he is asking -- what Ms.
6 LaRose is asking for is to be able to see the entire
7 document so that she can coordinate that, and as we
8 learned earlier today, you will have to get this to IT
9 pretty quickly so that Mr. Molinaro will be able to look
10 at this in SharePoint when he transcribes the hearing.

11 Okay, I'm sorry, Mr. Niew, you may continue.

12 MR. NIEW: Your Honor, would you like us to re-share
13 2(a) through 2(c) with opposing Counsel?

14 JUDGE STECKLER: Ms. LaRose, it is up to you.

15 MS. LaROSE: That is not necessary right now, Your
16 Honor. I just stated while they are testifying so I know
17 what page I am supposed to be on and what we are referring
18 to.

19 JUDGE STECKLER: Okay, thank you.

20 You may proceed.

21 MR. NIEW: Thank you.

22 Q BY MR. NIEW: I would like you to look at R-2(e),
23 please. It is a series of photos.

24 Can you tell what those depict?

25 A Yes, it is the company we hired to saw cut the

1 street, and that is just us jackhammering the street out.

2 Q And why was it necessary to jackhammer the street
3 out?

4 A To get back to the manhole to fix this 20-foot
5 section of pipe that had a backfall in it.

6 Q Looking at Exhibit -- I am waiting until it comes up.
7 I am looking at Exhibit 2(e). Is that a screenshot
8 of something?

9 A Yes, that is a screenshot from my phone -- between
10 text message between Curt McKinley and I that I sent --

11 Q And what date was it sent?

12 A July 8th.

13 JUDGE STECKLER: Where does it say that on there?

14 THE WITNESS: Top.

15 JUDGE STECKLER: Okay, thank you.

16 MS. LaROSE: Why does it say "Curt?"

17 JUDGE STECKLER: I'm sorry?

18 Q BY MR. NIEW: Is that a screenshot of your phone?

19 A Yes.

20 JUDGE STECKLER: Can you blow it up -- now that we
21 have seen the bottom, can you blow it up a little bit so I
22 can get a better view?

23 Thank you.

24 Now, scroll down, please.

25 Q BY MR. NIEW: And just to clarify, you sent that

1 document to Curt McKinley.

2 A Yes.

3 Q Looking at --

4 JUDGE STECKLER: Okay, go ahead, Mr. Niew.

5 Q BY MR. NIEW: Looking at Exhibit 2(f), is -- can you
6 tell what that is?

7 A Yes, that is still cutting the concrete street to get
8 to the manhole to get to the sanitary sewer pipe that has
9 backfall on us, and us jackhammering the street to get it
10 out.

11 Q Okay. Is that also a screenshot that you sent to
12 Curt McKinley?

13 A Yes.

14 Q Looking at Exhibit R-2(g). Can you explain what that
15 is?

16 A Yes, that is a screenshot I sent to Curt, of the pipe
17 that has the backfall on it, that we had to dig down to so
18 we could reset the pipe.

19 JUDGE STECKLER: Can you back up a little bit so I
20 can see the top of the document, and blow it up a little
21 bit.

22 Okay, it says 8:39. Is that what time you sent it?

23 THE WITNESS: Yes.

24 JUDGE STECKLER: Okay, but it has no date like the
25 other ones. Is that correct?

1 THE WITNESS: That is a continuation of the
2 screenshot of the one above that.

3 JUDGE STECKLER: Okay. Thank you.

4 MS. LaROSE: Your Honor, if I may, we keep hearing
5 "ding, ding, ding, ding," it sounds -- the screen keeps
6 vibrating around Mr. Daniel Needham, like he is getting
7 messages on that computer.

8 JUDGE STECKLER: Are you getting any e-mails while
9 you are on that computer?

10 THE WITNESS: I am not.

11 JUDGE STECKLER: What about chat or something?

12 THE WITNESS: I don't know how to even use the chat.
13 I don't -- all I see is four screens on the right, the
14 pictures, and the bookmarks on the left side.

15 JUDGE STECKLER: Okay, can you see me on your screen?

16 THE WITNESS: Yes, on the right side.

17 JUDGE STECKLER: Okay. Okay, that is not my e-mail.
18 Whose e-mail is coming up?

19 MR. WRIGHT: Judge, if I may, can I go in and check
20 Dan's computer? I have logged into my wife's e-mail in
21 order to access the Zoom invite. It is possible that she
22 is still up and she is getting e-mails to her work e-mail.
23 That is the only thing I can think.

24 THE COURT REPORTER: Yes.

25 [Long pause]

1 JUDGE STECKLER: We wouldn't want him reading her e-
2 mail anyway; is that correct?

3 MR. WRIGHT: No, we don't.

4 [Long pause]

5 JUDGE STECKLER: Okay, now we are all in position.

6 I'm sorry, Mr. Niew, what was your question?

7 Do we need to put back up the --

8 MR. NIEW: Yes, I would like to clarify what the 8:39
9 means on Exhibit 2(f).

10 JUDGE STECKLER: Okay, Mr. Needham, can you explain
11 that for us, please, for those of us who are not tech
12 savvy.

13 THE WITNESS: That would have been the time I took a
14 screenshot of my phone of that conversation.

15 JUDGE STECKLER: Was it 8:39 a.m. or 8:39 p.m.?

16 THE WITNESS: I -- I have no idea, ma'am.

17 JUDGE STECKLER: Okay.

18 THE WITNESS: I am not sure when I took the
19 screenshots.

20 JUDGE STECKLER: Okay, thank you.

21 Mr. Niew, you may continue.

22 Q BY MR. NIEW: You should have Exhibit R-2(g) in front
23 of you.

24 A Yes.

25 Q What is that?

1 A That is my ditch box that we dug down to the manhole
2 where the 20-foot piece of pipe had the four inches of
3 backfall on it. We dug down to re-lay it.

4 Q Meaning it is the wrong pitch?

5 A Yes.

6 MR. NIEW: At this time, Your Honor, I offer all of
7 Respondent's Exhibit 2.

8 JUDGE STECKLER: When we get the full markings to all
9 of the parties, will you offer it then, please? I am not
10 saying that they are not going to agree, but I want
11 everybody to make sure they have got the correct copies,
12 please.

13 MR. NIEW: Thank you, Your Honor.

14 JUDGE STECKLER: Wait a minute...

15 We went through (g), and it looks like on Mr.
16 Wright's screen, there is a (h), (i), and (j). Is that
17 part of Respondent's Exhibit 2, as well?

18 MR. NIEW: I think that was covered last week with
19 Nick.

20 JUDGE STECKLER: Okay, but they weren't marked that
21 way, correct?

22 MR. NIEW: They were not marked that way then.

23 JUDGE STECKLER: Okay, I just want to make sure that
24 Ms. LaRose and Mr. Williams have it and that they have an
25 opportunity to review before we admit.

1 MR. NIEW: All right.

2 JUDGE STECKLER: Okay, Mr. Niew, next?

3 Q BY MR. NIEW: Okay, Dan, I am going to put up (f) to
4 (g).

5 [Long pause]

6 Q BY MR. NIEW: I'm sorry, 2(h), the next one, showing
7 the panels.

8 A Okay.

9 Q Do you know what that photo depicts?

10 A Yes. Those are the ADA panels that got ran -- that
11 Adam VanOpDorp ran over at Cubby Park.

12 Q How do you know it was Adam?

13 A Because it was only him in that area working with a
14 machine.

15 Q Did you personally view those panels on the jobsite?

16 A I did.

17 Q And were any of them reusable from your view?

18 A No.

19 JUDGE STECKLER: Did you take those pictures, Mr.
20 Needham?

21 THE WITNESS: I do believe -- I am not for sure if
22 those are my pictures or not.

23 JUDGE STECKLER: When is -- what is your first
24 recollection of seeing them?

25 THE WITNESS: It was -- I was on-site that day. I

1 saw them, and then I got -- then Nick and them called me
2 and said that the concrete guy was just up there and we
3 ran -- those ADA panels got ran over. So I went over and
4 looked at them, and that was Adam in a skid-loader that
5 Adam was running.

6 JUDGE STECKLER: Is that the -- is that where they
7 were when you first saw them?

8 THE WITNESS: I saw them the very first thing in the
9 morning, and they were on the sidewalk in perfect
10 condition, and after I got the phone call, I went over and
11 looked, and that is how I found them.

12 JUDGE STECKLER: When did this happen?

13 THE WITNESS: That would have been the spring of '19.
14 I am not sure of the date, the exact date.

15 JUDGE STECKLER: So what did -- did you discuss this
16 with Adam?

17 THE WITNESS: Yes. He was like, "I don't know. I
18 might have."

19 JUDGE STECKLER: Okay.

20 THE WITNESS: He just shrugged his shoulders.

21 JUDGE STECKLER: Okay, Mr. Niew, you may continue.

22 Q BY MR. NIEW: Did -- in the history of the Company,
23 has construction materials ever been damaged by any other
24 operators similar to this?

25 A Yes.

1 Q When?

2 A I can't give you an exact time. It happens on
3 occasion.

4 Q Now, is there a smoking policy?

5 A Yes, there is.

6 Q Can you explain what that smoking policy is?

7 A There is no smoking in a machine -- no smoking in the
8 machines because nobody likes the smell of it.

9 Q Did you ever observe Adam smoking in the machines?

10 A Yes, multiple occasions. Told him to quit, and even
11 since we were talking about Cubby Park, I told Adam that
12 same day that he ran those ADA panels over, he was smoking
13 in the skid-loader right in front of me, and I went over
14 to him and I said, "What are you doing? Don't smoke in
15 the cab. You can't smoke in the cab."

16 He is like, "Oh, sorry," and shrugged his shoulders.

17 Q Now, I would like to call your attention to -- we are
18 going to put up Exhibit 4. In particular, 4(f).

19 *[Long pause]*

20 Q Adam, do you recognize that document?

21 A Yes, that's a text message between Curt McKinley and
22 I.

23 Q And why did you initiate -- who initiated the text?

24 A I did.

25 Q And why did you do that?

1 A I was letting Curt know that I caught Adam smoking in
2 the cab again.

3 JUDGE STECKLER: Are your statements in blue, Mr.
4 Needham?

5 THE WITNESS: Yes. Yes, ma'am.

6 Q BY MR. NIEW: Prior to May 13th, would -- it is 2019;
7 am I correct?

8 A Yes.

9 Q Prior to May 13th, 2019, had Adam ever smoked in a
10 cab directly in front of you?

11 A Yes.

12 Q And -- and when did that occur?

13 A I have caught him several times throughout the years,
14 and I have always just told him to stop. "Don't smoke in
15 the cabs. Nobody likes the smell of it."

16 Q In that text message, what did you mean by the term,
17 "further over the deep end?"

18 A Just tired of Adam's -- I was getting sick and tired
19 of Adam. He had shown up late, not really being
20 productive at work. It was getting worse and worse in the
21 spring of '19, and I was just getting sick and tired of
22 it.

23 Q Now, calling your attention to the period of the fall
24 of 2018 through May 13th of 2019, did you observe anything
25 different about Adam?

1 A Yes. He was showing up late for work more often.

2 Like I said, his productivity went way down. He didn't
3 really care about anything anymore, and his quality of
4 craftsmanship was just gone.

5 Q And what do you mean "craftsmanship gone?"

6 A They way he finished, cleaned up a jobsite, and his
7 quality of work was way down.

8 Q Do you know Brett Gripp?

9 A I do.

10 Q And how do you know him?

11 A He was a truck driver for us.

12 Q Did you ever observe him driving a truck?

13 A Yes, I did.

14 Q About how often?

15 A He drove -- mostly all he did was drove a dump truck,
16 and he drove a semi on occasion.

17 Q Did you ever have a conversation with Mr. Gripp about
18 his driving habits?

19 A Yes. It was in the spring of '19, again at the 3M in
20 Knoxville, Iowa, and in the plant they do have -- I
21 believe it was a 10 mile an hour or 15 mile an hour speed
22 limit, and he pulled in in the semi one morning, and he
23 was probably going 25 or 30 around the corner, and when I
24 saw him, I said, "You have got to slow down. They are
25 very, very strict. I don't want to get kicked off of this

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 job."

2 Q And what did Mr. Gripp say back to you, if anything?

3 A He just said, "Sorry. I will slow down. I was
4 trying to get back," because it was a little over a two-
5 hour drive, so...

6 Q Were you involved in the decision to terminate Brett?

7 A Yes. I conferred -- talked with Nick and Curt over
8 it, and I agreed.

9 Q Other than getting somewhat slow, was there any other
10 reasons that you discussed with one of the other managers
11 why Brett should be let go?

12 A Yes. His mouth, just very, very mouthy. He could
13 not do what he told us he could do. He told us he could
14 run any piece of machinery that we had, if not better than
15 every employee that we had, and that was not even close to
16 being the case.

17 JUDGE STECKLER: Mr. Needham, what do you mean by
18 "mouthy?"

19 THE WITNESS: He just -- well, "I could do that so
20 much better than you," "I can do this so much better than
21 everybody else." He said another remark to one of our
22 laborers that his -- I don't know how to say it.

23 JUDGE STECKLER: Say it the way you heard it.

24 THE WITNESS: Okay, he told his wife that -- it is
25 not very friendly, but Brett used to date -- Brett used to

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 date one of our laborer's wives back in high school, and
2 he told -- asked -- I am trying to think of his name --
3 asked our laborer, "Have you got past the used parts," of
4 his wife -- of his wife.

5 JUDGE STECKLER: Okay, when did that happen?

6 THE WITNESS: That would have been like in the fall
7 of '18.

8 JUDGE STECKLER: And how did you learn that this
9 incident occurred?

10 THE WITNESS: I was told by another laborer.

11 JUDGE STECKLER: Was the other laborer present when
12 this statement was made?

13 THE WITNESS: Yes.

14 JUDGE STECKLER: Okay, and what was the -- not the
15 laborer who dated the wife, but -- that was married to the
16 ex-girlfriend, but what did the other laborer say to you
17 about the remark?

18 THE WITNESS: Nothing, just -- "he is just lucky I
19 have calmed down over the years."

20 Or, I guess -- what labor? I asked --

21 JUDGE STECKLER: The one that reported it to you?

22 THE WITNESS: Nothing. He just said, "I can't
23 believe he didn't hit him."

24 JUDGE STECKLER: Okay, and did you talk to Mr. Gripp
25 about that?

1 THE WITNESS: I did not.

2 JUDGE STECKLER: Do you know if anybody did?

3 THE WITNESS: I am not for sure about that at all.

4 JUDGE STECKLER: Okay, are there some times when
5 choice language is used in that shop?

6 THE WITNESS: Yes.

7 JUDGE STECKLER: Okay. You may continue, Mr. Niew.

8 Q BY MR. NIEW: You heard about the allegation that
9 someone parked a car or a vehicle at Brett Gripp's house,
10 or near his house?

11 A Yes, I have heard that.

12 JUDGE STECKLER: Where did you hear that from, Mr.
13 Needham?

14 THE WITNESS: From the ULP that was filed against us.

15 JUDGE STECKLER: Okay, go ahead.

16 Q BY MR. NIEW: Did you ever park any vehicle at or
17 near Brett Gripp's house?

18 A No.

19 Q Did you tell any employee of Needham to park a
20 vehicle at or near Brett Gripp's house?

21 A No.

22 Q Did you talk -- did anybody ever tell you that they
23 were told by management to go park a vehicle at or near
24 Brett Gripp's house?

25 A No.

1 Q Now, in March of 2019, what would happen if a vehicle
2 of an operator or other employee was no longer drivable
3 for some reason?

4 A We have -- back then, we had several shop trucks,
5 spare trucks, if you will, and if somebody's car had
6 broken down or truck had broken down, we would let them
7 drive a truck until their vehicle was fixed.

8 Q Did the Operating Engineers Local 150 organizing
9 effort have anything to do with the letting go of either
10 Brett Gripp or Adam?

11 A No.

12 Q Assuming there was no organizing effort, would Brett
13 Gripp or Adam be let go under the circumstances that they
14 were?

15 A Yes.

16 *[Long pause]*

17 MR. NIEW: May I have two minutes with my co-Counsel,
18 please?

19 JUDGE STECKLER: Yes. Mr. Needham, we are going to
20 go off the record. You can get up, stretch, but don't
21 leave the area and don't talk about the testimony with
22 anybody, okay?

23 THE WITNESS: Yes.

24 JUDGE STECKLER: Okay, we are off the record.

25 *[Off the record]*

1 JUDGE STECKLER: Back on the record.

2 Mr. Niew, any additional questions?

3 MR. NIEW: No additional questions for this witness,
4 but I would like to offer Exhibit 4(f) at this time.

5 JUDGE STECKLER: Was 4(f) marked that way before
6 today?

7 MR. NIEW: I don't believe so.

8 JUDGE STECKLER: Okay, so the same deal as with 2.
9 You need to share that with opposing Counsel so that we
10 can -- so that everyone is seeing the correct --

11 MR. NIEW: We are trying to do that, Your Honor.

12 JUDGE STECKLER: Okay, I know. All of these fun tech
13 things are going on.

14 Mr. Williams, questions?

15 MR. WILLIAMS: Yes, Your Honor.

16 CROSS EXAMINATION

17 Q BY MR. WILLIAMS: Mr. Needham, you testified that you
18 are also a member of management of Needham Excavating,
19 Inc.

20 A Yes.

21 Q What is your position as part of the -- as part of
22 the management of Needham Excavating, Inc.?

23 A A project manager.

24 Q And what do you do as a project manager?

25 A I run jobs. I operate -- I run jobs.

1 Q When you say "run jobs," what do you mean by "run
2 jobs?"

3 A I oversee projects.

4 Q On a day to day basis?

5 A Yes.

6 Q And how long have you held that position?

7 A For roughly nineteen years.

8 Q Now you testified that you -- that you knew Adam
9 VanOpDorp.

10 A Yeah.

11 Q And you -- isn't it true that he was discharged July
12 8th, 2019?

13 A Yes.

14 Q Okay, and who made the decision to discharge him?

15 A It was between Nick, Curt -- Nick Needham, Curt
16 McKinley, and I.

17 Q Okay. Did you say Joe Needham?

18 A I -- I don't recall he may have been. I am sure he
19 was, but I am not a hundred percent sure if he was
20 involved in that conversation or not.

21 Q Okay, and why was Mr. VanOpDorp discharged?

22 A Falsifying timecards and his projects, he kept losing
23 money on, or kept screwing up on.

24 Q Which projects were those?

25 A 18th Streets - Moline and 11th Street - Moline.

1 Q Okay.

2 A And his disregard for our policies, for the smoking
3 and talking on the phone.

4 Q Okay, so you are saying he was discharged for
5 falsifying a timecard, work issues with 18th -- with the
6 18th Street job and the 11th Street job, and the disregard
7 for employee policies?

8 A Yes.

9 Q Do you know if he was told the reason for his
10 discharge?

11 A I -- yes. I over heard -- I was told he was shown
12 pictures of the 11th Street projects and falsification --
13 and the timecard falsification.

14 Q Now, going back to the cellphone policy, when was
15 that implemented?

16 A Roughly seven or eight years ago, roughly.

17 Q And you testified that it is verbal.

18 A Yes.

19 Q And what is the policy?

20 A There is no cellphones while you are operating
21 equipment. If you have to take a phone call, stop safely,
22 and get done with your business, and then go back to work.

23 Q You said you had multiple discussions with Adam
24 VanOpDorp about this cellphone policy.

25 A Yes.

1 Q And when did you have discussions with him?

2 A Throughout the years. It's happened multiple times;
3 can't count them.

4 Q Okay, starting when?

5 A Like ten years ago, or -- yeah, I think it was over
6 ten years ago, and then we finally implemented -- like I
7 said, I am not exactly sure on when that -- when we started
8 that.

9 Q Okay, so -- did you have to talk to him multiple
10 times every year going back ten years ago?

11 A Yes.

12 Q Okay, so since 2011, you have spoken to him since
13 2011 multiple times every year since then.

14 A Yes.

15 Q Do you remember -- do you recall the dates --

16 A No, I do not.

17 Q Do you remember where you were when those discussions
18 took place?

19 A No, not the specific jobsites, no.

20 Q You also testified there is a policy regarding
21 ordering materials.

22 A Yes.

23 Q And when was that policy implemented?

24 A It's always been implemented. Once we went out --
25 since we went out on our own doing our own pipework, being

1 in charge of the pipework, so that was five or six years
2 ago.

3 Q Okay, and what is the policy?

4 A You need to have the material ordered that you need
5 for the next week, or if you need a dump truck or rock,
6 you need to know the day before so we can order trucks or
7 get trucks that we need.

8 Q Okay, is that a verbal policy, as well?

9 A Yes.

10 Q And how is that policy conveyed to employees?

11 A Everybody gets told that. Have been told that
12 multiple times.

13 Q Okay. And did you have any discussions with Adam
14 VanOpDorp about a violation of that policy?

15 A Nothing that I can recall any specifics.

16 Q Okay.

17 A I am sure I have.

18 Q So you were just told on a couple of occasions that
19 he did not order materials as he should have?

20 A Yes, and I have overheard that -- or he will call me,
21 "Hey, I need a truck."

22 "Okay, I will steal off my job and give you one," so
23 he could get his job done also, when he needed another
24 truck.

25 Q Do you remember when those discussions took place?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 A Not exact dates, no.
- 2 Q So 2016, '17, '18?
- 3 A Yes, '16, '17, '18.
- 4 Q Okay, so every year for the last five years?
- 5 A Yes, this has happened for --
- 6 Q In 2019?
- 7 A Yes.
- 8 Q You also testified that there is a policy concerning
- 9 greasing machines. What is that policy?
- 10 A That -- when you get done running machinery for the
- 11 day, you have to refuel and grease each machine that you
- 12 ran, to make sure it is ready for the next day.
- 13 Q Okay, when was that policy implemented?
- 14 A It has always been, since the -- the start of the
- 15 company.
- 16 Q And that policy is verbal, as well?
- 17 A Yes.
- 18 Q And how is that policy conveyed to employees?
- 19 A That there is -- everybody is told, and it is told
- 20 multiple times.
- 21 Q Okay, and so how many times did you have a discussion
- 22 with Adam VanOpDorp about his failure to grease materials
- 23 -- machines?
- 24 A I -- I can't give you an exact number. There have
- 25 been multiple -- a constant problem.

1 Q Okay, since when?

2 A The -- it has really been a constant about the winter
3 of -- it would be the late winter of '19, the spring of
4 '19. There was occasion in '18, '17, '16, he would
5 forget, or he would run out of fuel or something.

6 Q Now, you also testified that Adam VanOpDorp was late
7 to work.

8 A Yes.

9 Q Do you know on how many occasions?

10 A I can't count -- I can't count that many.

11 Q Do you remember when he started -- when you noticed
12 he was starting to come in late, in to work late?

13 A Yes. It got a lot worse in the late winter of '19
14 through the spring of '19.

15 Q Late winter of '19?

16 A Yes, like January and February of '19.

17 Q Do you remember the dates?

18 A An exact date -- I know it was like the second week
19 of February, a job at 3M. I was -- I was on vacation, and
20 Aaron Hamilton was -- took over my position while I was on
21 vacation that week, and when I came back, Aaron told me
22 that Adam was over two hours late on Monday morning.

23 Q And you said -- you also testified that you noticed
24 that Adam VanOpDorp's quality of work was declining. When
25 did you start to notice that?

1 A Same -- pretty much January '19 to July, whenever he
2 was let go.

3 Q Now, isn't it true that Mr. VanOpDorp was never
4 disciplined for the cellphone policy?

5 A He was yelled at, but disciplined in any way, I don't
6 think so, no.

7 Q And isn't it true that he was not disciplined for not
8 -- for failing to order materials?

9 A No.

10 Q And isn't it true that he wasn't disciplined for
11 failure to grease machines?

12 A No.

13 Q Isn't it true that he wasn't disciplined for smoking
14 in the cab of any -- of any heavy equipment?

15 A No.

16 *[Long pause]*

17 Q Isn't it true that he was never disciplined for
18 allegedly being late to work?

19 A No.

20 Q And isn't it true that he was never disciplined for
21 alleged decline in the quality of his work?

22 A No.

23 Q Now, you testified that Brett Gripp was laid off
24 because he was mouthy, correct?

25 A Yes.

1 Q And the basis -- I guess your term -- your term
2 "mouthy" is based on him allegedly making inappropriate
3 comments, correct?

4 A He was a brag saying he could do anything better than
5 anybody that we had.

6 Q Okay, so -- so the comments that were the basis of
7 his being laid off, when did those comments start?

8 A The day -- the day he started.

9 Q The day he started?

10 A Yeah.

11 Q Well, how often did he make these comments?

12 A I am not -- I am not a hundred percent -- to me, it
13 was on multiple occasions.

14 Q Well, was it consistent, meaning, like was it daily,
15 weekly, monthly?

16 A To me personally, probably monthly.

17 Q Okay, so he would make these inappropriate comments
18 every month since he started working for Needham.

19 A Yep.

20 Q And how did you find out about these comments?

21 A He would tell me, or I would hear them from somebody
22 else.

23 Q And you also testified that the other reason that Mr.
24 Gripp was laid off was because he was unable to operate
25 pieces of equipment. Can you be more -- more specific?

1 What pieces did he have a problem operating?

2 MR. NIEW: Mischaracterizes his testimony.

3 Objection.

4 JUDGE STECKLER: Let me add a point of clarification
5 here, and for the record also.

6 Mr. Needham, you said he was unable to operate
7 certain pieces of equipment; is that correct?

8 THE WITNESS: Well, to operate the loader; operate
9 enough to load it on our trailer if he was moving it.

10 JUDGE STECKLER: Okay, is that what you said
11 originally?

12 THE WITNESS: I am not -- I don't know if I put in
13 the loading side of it.

14 JUDGE STECKLER: Okay, were you present when he had
15 problems doing this?

16 THE WITNESS: I can't -- I know I was, but I can't
17 pinpoint the exact location.

18 JUDGE STECKLER: Or a date? How about that?

19 THE WITNESS: I can't give you a date.

20 JUDGE STECKLER: When did this problem start?

21 THE WITNESS: When he started running -- when he
22 tried running a tub, trucking tub. I was told that he
23 didn't know how to operate the tub, so Amber Nielsen had
24 to show him how to.

25 JUDGE STECKLER: Okay, and how did you find that out?

1 THE WITNESS: I was told from -- I think Nick Needham
2 or Curt McKinley.

3 JUDGE STECKLER: Okay, so you didn't witness that
4 yourself; is that your understanding?

5 THE WITNESS: I didn't.

6 JUDGE STECKLER: So you just heard about it around
7 the place. To your knowledge, did anybody do anything
8 about the -- to -- about Mr. Gripp failing to do that?

9 THE WITNESS: As a punishment or --

10 JUDGE STECKLER: Well, training and/or discipline?

11 THE WITNESS: Yeah, Amber taught him how to run the
12 tub, and there was no discipline.

13 JUDGE STECKLER: Going back to what Mr. Williams
14 asked before about him being mouthy, so he couldn't meet
15 your expectations, the Company's expectations from the
16 git-go about running certain pieces of equipment. Am I
17 understanding that correctly?

18 THE WITNESS: Yes.

19 JUDGE STECKLER: Okay, Mr. Williams, you may
20 continue.

21 Q BY MR. WILLIAMS: Was Mr. Gripp ever disciplined for
22 his alleged inability to operate a certain piece of
23 equipment?

24 A No. We would keep him off -- try to keep him off the
25 -- or what he couldn't do.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WILLIAMS: May I have one -- a couple seconds,
2 Your Honor?

3 JUDGE STECKLER: Yes, we will go off the record.

4 *[Off the record]*

5 JUDGE STECKLER: We are back on the record.

6 Mr. Williams?

7 MR. WILLIAMS: At this time, General Counsel has no
8 further questions for this witness, Your Honor.

9 JUDGE STECKLER: Thank you.

10 Ms. LaRose?

11 MS. LaROSE: I need to take a comfort break. Can we
12 have just five minutes, please?

13 JUDGE STECKLER: Okay, we can do that.

14 Mr. Needham, you will be allowed to get up and move
15 around. Just don't talk to anybody about your testimony.

16 We will be back on the record in five minutes, okay?

17 THE WITNESS: May I go out of the room to get a
18 water?

19 JUDGE STECKLER: Yes, sir. Just do not talk to
20 anybody about your testimony.

21 THE WITNESS: Thanks.

22 JUDGE STECKLER: Okay.

23 Are we off the record?

24 *[Off the record]*

25 THE COURT REPORTER: We are on.

1 JUDGE STECKLER: Thank you.

2 Ms. LaRose, go ahead.

3 MS. LaROSE: Thank you.

4 CROSS EXAMINATION

5 Q BY MS. LaROSE: Mr. Needham, I am going to show you
6 the document that has been marked as Employer's Exhibit
7 2(b).

8 I think you testified that this is a trench box; is
9 that right?

10 A Yes.

11 Q And OSHA requires the trench box to extend above the
12 top of the ditch by eighteen inches, right?

13 A Yes.

14 Q That is a safety issue, right?

15 A Yes.

16 Q A key safety issue, right?

17 A Yes. An occupied ditch box must be above eighteen
18 inches.

19 Q Yeah, and this one is not, right?

20 A Well, you can't -- I can't tell you that just off of
21 pictures because there is a shelf on the left side, there
22 is a shelf on the right side, and I can...

23 MS. LaROSE: Let's go to 2(e), Jim, and then, please,
24 Jim, zoom in on the last picture there.

25 Thank you.

1 Q BY MS. LaROSE: It doesn't appear in separate -- so I
2 have on the screen 2(e). It doesn't appear that that
3 trench box is eighteen inches above the top of the ditch,
4 is that right?

5 A Right now, no. There is nobody in that trench box
6 either.

7 Q Well, but there will be somebody in that trench box
8 very soon, right?

9 A I might have raised it up. I don't know. I don't
10 remember.

11 Q There is a ladder in there, right?

12 A Yes, there is.

13 Q Which would tend to indicate that somebody is about
14 to go into that ditch, right?

15 A Yes. It is there but I am not saying anybody is in
16 there.

17 Q No, but it is for somebody to use, right?

18 A Yep.

19 Q Okay.

20 MS. LaROSE: Those are all of my questions for this
21 witness.

22 JUDGE STECKLER: Okay, Mr. Needham, as usual, I have
23 a ton of questions, so if you will bear with me just a
24 moment while I back up.

25 EXAMINATION BY THE COURT

1 JUDGE STECKLER: Did you have anybody else that
2 smoked at Needham or K & K?

3 THE WITNESS: Yes.

4 JUDGE STECKLER: And do you know how frequently they
5 smoked?

6 THE WITNESS: Quite frequently.

7 JUDGE STECKLER: Did they all get out of the cabs to
8 smoke?

9 THE WITNESS: Yes.

10 JUDGE STECKLER: So if they are smoking frequently,
11 how much work are they missing because of these smoke
12 breaks?

13 THE WITNESS: A couple minutes here and there.

14 JUDGE STECKLER: It takes only a couple minutes to
15 smoke a full cigarette?

16 THE WITNESS: I think so. I don't smoke, ma'am.

17 It doesn't appear to take that long, no.

18 JUDGE STECKLER: Okay, so you don't know how long
19 they were smoking, is that what you are telling me?

20 THE WITNESS: Correct.

21 JUDGE STECKLER: Do you know how often they were
22 taking smoking breaks?

23 THE WITNESS: No, I can't give you an exact number,
24 no.

25 JUDGE STECKLER: Did you correct anybody for taking a

1 lot of smoking breaks?

2 THE WITNESS: No.

3 JUDGE STECKLER: Did you have a policy about how many
4 smoking breaks someone would be entitled to?

5 THE WITNESS: No.

6 JUDGE STECKLER: Okay. Do you know that Mr.
7 VanOpDorp was involved with the organizing effort at --
8 involve the International Union of Operating Engineers
9 Local 150?

10 THE WITNESS: I didn't find that out until, I think
11 it was, April, sometime in '19.

12 JUDGE STECKLER: And how did you find that out?

13 THE WITNESS: I was told he showed up to work with a
14 150 sweatshirt on, and had a 1 50 sticker in the back of
15 his truck.

16 JUDGE STECKLER: Who told you that?

17 THE WITNESS: I -- I am not for sure.

18 JUDGE STECKLER: Could it have been your father?

19 THE WITNESS: It is possible.

20 JUDGE STECKLER: Were you present at a meeting about
21 health benefits involving Mr. VanOpDorp and a few other
22 employees?

23 THE WITNESS: Yes, I think I was.

24 JUDGE STECKLER: Okay. What, if anything, did you
25 observe about Mr. VanOpDorp's clothing that day?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: He had a 150 sweatshirt on, I do
2 believe.

3 JUDGE STECKLER: Okay, can you recall seeing that
4 sweatshirt before that day?

5 THE WITNESS: No.

6 JUDGE STECKLER: Let's see...

7 [Long pause]

8 JUDGE STECKLER: At all in 2018?

9 THE WITNESS: I did not.

10 JUDGE STECKLER: When we started this morning, you
11 said you had reviewed some documents in preparation for
12 your testimony today. Can you tell me what that was,
13 please?

14 THE WITNESS: Just notes I had taken from last week
15 in preparation for this, looking over exhibits and all of
16 that stuff, evidence.

17 JUDGE STECKLER: Okay, were the exhibits marked as
18 they were this morning with 2(a), 2(b), etc.?

19 THE WITNESS: No.

20 JUDGE STECKLER: Okay, so when you said last week,
21 when did this start?

22 THE WITNESS: I am not for sure. Monday, I think it
23 was.

24 JUDGE STECKLER: What about on Thursday?

25 THE WITNESS: No.

1 JUDGE STECKLER: Friday?

2 THE WITNESS: No.

3 JUDGE STECKLER: Over the weekend?

4 THE WITNESS: No.

5 JUDGE STECKLER: And you looked at the documents
6 again this morning; is that correct?

7 THE WITNESS: Yes.

8 JUDGE STECKLER: And any additional documents besides
9 those pictures?

10 THE WITNESS: No, just my --

11 JUDGE STECKLER: Your personal notes?

12 THE WITNESS: Yes, my personal notes.

13 JUDGE STECKLER: When did you make those personal
14 notes?

15 THE WITNESS: Last week. Last Monday, I think it
16 was.

17 JUDGE STECKLER: What prompted you to make notes last
18 week?

19 THE WITNESS: I was going through the exhibits,
20 talking with Nick and Curt and the attorneys.

21 JUDGE STECKLER: When you were talking about Mr.
22 VanOpDorp and greasing machinery, was there anyone else
23 that had those problems?

24 THE WITNESS: Yes.

25 JUDGE STECKLER: So who else greased --

1 THE WITNESS: Oh, I'm sorry. I thought you were
2 asking if I had had somebody else complain about it.

3 No, not to my recollection, no.

4 JUDGE STECKLER: Okay, what about the running out of
5 fuel issue. How often did that happen?

6 THE WITNESS: Oh, it happens on occasions. If we
7 don't have a fuel tank around or -- not very often.

8 JUDGE STECKLER: Okay, so -- but it does happen. Is
9 that what you are telling -- what I am understanding?

10 THE WITNESS: Yes, it does happen on occasion. If
11 you are running a couple different jobs and you have a
12 fuel barrel, you run out of fuel, and you have to leave
13 the job to go get more.

14 JUDGE STECKLER: Okay, I may have forgotten your
15 answer, but what kind of supplies and equipment was Mr.
16 VanOpDorp supposed to be ordering?

17 THE WITNESS: Pipe, pipe fittings, rock, sand, trucks
18 if you need to haul dirt out.

19 JUDGE STECKLER: Okay, is that only when he is a
20 project manager or the foreman on the job?

21 THE WITNESS: Yes, he is the foreman on a job when he
22 is operating. When he is on a job, he will be a lead man.

23 JUDGE STECKLER: Was he the only one who was a lead
24 man on a job?

25 THE WITNESS: On that one specific job that he was

1 on?

2 JUDGE STECKLER: Any of them. At any time.

3 THE WITNESS: There's -- all of the operators take
4 care of themselves. If they have got to order pipe, they
5 order pipe in advance, or order trucks. The lead off
6 excavator is in charge.

7 JUDGE STECKLER: When did he become a lead operator?

8 THE WITNESS: After we started doing the pipework.

9 JUDGE STECKLER: So that was about what?

10 THE WITNESS: Five or six years ago.

11 JUDGE STECKLER: So, what, in 2016?

12 THE WITNESS: Roughly, yes.

13 JUDGE STECKLER: What involvement do you have with
14 the machine shop, the repair shop?

15 THE WITNESS: I typically go in there over the winter
16 and help the mechanics, and on rain days, I go in there
17 and help the mechanics, change oil, fix equipment, and if
18 they have questions on what piece of machinery that needs
19 to go in next, I tell them the priority.

20 JUDGE STECKLER: Okay, as the project manager, you
21 don't have much time to spend on the machine, do you?

22 THE WITNESS: I -- believe it or not, I do.

23 JUDGE STECKLER: You do? Okay. And when you are
24 project manager, you have got to order all of the supplies
25 needed for that project. Am I understanding that

1 correctly?

2 THE WITNESS: Correct.

3 JUDGE STECKLER: Okay, Mr. Niew, your witness.

4 REDIRECT EXAMINATION

5 Q BY MR. NIEW: Dan, Mr. Williams was asking you a
6 number of questions and he kept using the word
7 "discipline." What did you understand he meant by
8 "discipline?"

9 A Time off, or cut in pay or something along those
10 lines.

11 Q When -- as a typical example, if someone does
12 something wrong, how does the Company handle the situation
13 with the employee?

14 A Typically, we will talk to them, explain what is
15 going on, or had been complained to us, and you know, just
16 talk to them about it.

17 Q And that us always verbal?

18 A Yes.

19 Q Has that been the policy since you've been with the
20 company?

21 A Yes.

22 Q The Judge was asking you about running out of fuel.
23 Were you -- what were you referring to when someone would
24 run out of fuel?

25 A The fuel cell in their truck, in the back of their

1 pickup.

2 Q Would there be times that an operator could not be
3 faulted for running out of fuel?

4 A There could be times, yes. If we had a couple pieces
5 of machinery, if you don't have a big fuel tank there,
6 your pickup cannot get it full if you are running a full
7 10-hour day, so you have to go to another jobsite and --
8 or go to a big barrel, fuel barrel, and fill your truck
9 back up, and then fuel it if you are the only one on the
10 job that has a fuel tank in the back of your truck.

11 Q Did you or anybody from the Company ever document
12 shortcomings of any employee in writing?

13 A In writing? I can't think of anything off the top of
14 my head. No.

15 Q I would like to switch over to Brett Gripp for a
16 moment...

17 When did you first become aware of Brett's
18 shortcomings, I guess I would call it?

19 A It would be not too long after he started. I can't
20 give you an exact date.

21 JUDGE STECKLER: Mr. Needham, was he on a
22 probationary period originally?

23 THE WITNESS: Not to my knowledge. I wasn't involved
24 in the -- I wasn't present during the hiring. I am not
25 sure exactly what all was discussed.

1 JUDGE STECKLER: Thank you.

2 Q BY MR. NIEW: Does Needham Excavating have a
3 probationary period?

4 A Not that I have seen, no.

5 MR. NIEW: No further questions.

6 JUDGE STECKLER: Mr. Williams?

7 *[Long pause]*

8 JUDGE STECKLER: Mr. Williams, any questions, sir?

9 MR. WILLIAMS: No questions, Your Honor.

10 JUDGE STECKLER: Ms. LaRose?

11 MS. LaROSE: No questions, Your Honor.

12 JUDGE STECKLER: Mr. Needham, you are about to be
13 excused as a witness. Thank you for coming in this
14 morning.

15 Because of the nature of the hearing, we are not sure
16 when it is going to end. Please do not discuss your
17 testimony with anyone until after the hearing is over.

18 Is that understood?

19 THE WITNESS: Yes.

20 JUDGE STECKLER: Thank you.

21 *[Witness excused]*

22 JUDGE STECKLER: We will go off the record while Mr.
23 Needham leaves, and let's discuss the witness situation
24 for the rest of the day.

25 *[Off the record]*

1 JUDGE STECKLER: Mr. Molinaro?

2 THE COURT REPORTER: We are on the record.

3 JUDGE STECKLER: Thank you.

4 Respondent may call its next witness.

5 MR. NIEW: Joe Needham.

6 JUDGE STECKLER: Good morning or afternoon, depending
7 on where you are, Mr. Needham.

8 You have been here a couple of times before, correct?

9 THE WITNESS: Correct.

10 JUDGE STECKLER: And you know that you are still
11 under oath, correct?

12 THE WITNESS: Correct.

13 (Whereupon,

14 **JOE NEEDHAM**

15 having been previously sworn/affirmed, was recalled as a
16 witness herein, and was further examined and testified via
17 video-conference, as follows:)

18 JUDGE STECKLER: Is the room -- are you in the room
19 by yourself?

20 THE WITNESS: Yes.

21 JUDGE STECKLER: Is the door open or shut?

22 THE WITNESS: Shut.

23 JUDGE STECKLER: Do you have access to e-mail at this
24 time?

25 THE WITNESS: Well, my phone is sitting right here.

1 JUDGE STECKLER: Okay.

2 THE WITNESS: Do you want me to take it out of the
3 room?

4 JUDGE STECKLER: Well, you can just put it in your
5 pocket. You will feel the vibrations instead of just
6 looking at it; how is that?

7 THE WITNESS: Okay.

8 JUDGE STECKLER: Okay. Okay, have you discussed your
9 testimony with anybody?

10 THE WITNESS: No.

11 JUDGE STECKLER: Okay, have you discussed your
12 testimony with anybody?

13 THE WITNESS: No.

14 JUDGE STECKLER: Okay, Mr. Niew, you may continue,
15 please.

16 DIRECT EXAMINATION

17 Q BY MR. NIEW: I would like to go back to July 1st,
18 2019. Do you remember that date?

19 A Ys.

20 Q And do you remember where you were?

21 A No, I don't. No.

22 Q Do you remember when you found out about when Adam
23 left the jobsite on July 1st?

24 A Chad Havill came into the office and I just happened
25 to be there, and he was there, like a quarter before 4:00,

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 and I said, "You guys got done early, huh?"

2 He had come to the shop for some supplies, grease,
3 rags, or whatever, or information, and I just asked him,
4 "Everybody get done early," and he said, "Yes."

5 Q Did he say anything about whether Adam had left the
6 jobsite?

7 A Yes, he did.

8 Q What did Mr. Havill say?

9 A I asked him, "Did Adam leave then too early?"
10 He goes, "Yes."

11 Q Was there a time mentioned?

12 A Yeah, it was right about 3:30.

13 Q 3:30 meaning that is when Adam left?

14 A Yes.

15 Q Now, did you ever have another conversation with Chad
16 Havill after July 1st, 2019?

17 A Yes.

18 Q And approximately when was that?

19 A The day -- I believe it was the day that we let Adam
20 go, whatever that date was. I either texted Chad or
21 talked to him. I do not remember which. I had lost my
22 phone. It crashed and had the text messages on it from
23 that day that I did not have saved.

24 So, I either called or texted Chad and said, "Chad,
25 Adam left on July 1st, or the day that we were in

1 discussion here at 3:30," and he texted me back when we
2 were talking on the phone, and said, "Yes."

3 Q Anything else said?

4 A On that day, no; not to my recollection.

5 Q Did you have any other conversations with Chad
6 Havill?

7 A Yes, the day after that, he texted me, and I know
8 this one was in a text, and he goes, "Now I understand
9 your question from yesterday."

10 Q Do you know what he was referencing?

11 A Yes.

12 Q What was it?

13 A I was double-checking to make sure that Adam had left
14 the job early, the day before.

15 Q Did you ever say to anybody, "I can't reveal my
16 plans," or something similar to that?

17 A "I can't reveal my plans?"

18 Q Or, "I couldn't reveal my plans."

19 A "I could not reveal my plans."

20 On -- on what subject. I guess that I am not -- not
21 that I recall on any subject -- on any subject.

22 Q Did you ever tell any employee of Needham Excavating
23 that you "have twenty employees that the Union doesn't
24 know about?"

25 A No, no.

1 Q And you didn't tell Adam that, did you?

2 A No.

3 JUDGE STECKLER: Mr. Niew, he has already said that
4 he didn't tell anybody that. And, then, obviously, Mr.
5 VanOpDorp is in that group, is that not correct?

6 THE WITNESS: Is that a question for me?

7 JUDGE STECKLER: No, that is a question for Mr. Niew.

8 MR. NIEW: I apologize, Judge.

9 Q BY MR. NIEW: I would like to go back to K & K's
10 operation again.

11 Prior to the merger of K & K and Needham Excavating,
12 who were the supervisors of K & K employees?

13 A Bill Bouchard was the main one, and then I don't
14 remember the dates, but Bob Dobenknecker [*Phonetic*] was
15 there for a couple years, and I don't remember if that was
16 prior -- I guess when you are talking merger, are you
17 talking Joe Needham taking over, or the merger date of
18 April of '19?

19 Q April 19th -- of 2019.

20 A Right. Correct.

21 In April of 2019, the supervisor's at K & K were
22 NEI's supervisors.

23 Q Can you give me the names, please?

24 A Nick Needham, Curt McKinley, and Daniel Needham.

25 JUDGE STECKLER: So, in 2016, Mr. Needham, can you

1 tell me who was supervising K & K?

2 THE WITNESS: After I -- in mid-2016, through the
3 divorce, I took ownership of K & K. I bought K & K from
4 Nick's ex-wife, Carissa.

5 JUDGE STECKLER: Okay.

6 THE WITNESS: That was retroactive back to January
7 1st.

8 So after I owned it --

9 JUDGE STECKLER: Yes, sir --

10 THE WITNESS: After we owned it, Needham Excavating,
11 the supervisors there, started dealing directly with the
12 mechanics, and in that timeframe, we started doing less
13 and less outside work and --

14 JUDGE STECKLER: Well, my question was kind of
15 narrow. I was just asking about the managers.

16 THE WITNESS: Okay.

17 JUDGE STECKLER: You have answered that for me.

18 Thank you so much.

19 Mr. Niew, you may continue.

20 Q BY MR. NIEW: Now, when NEI and K & K were merged
21 into one company in April of 2019, did the management
22 change at all?

23 A In 2019 when we merged, did management change?

24 Q Yes.

25 A No.

1 MR. NIEW: Your Honor, I am pretty close to wrapping
2 this up. I would like to confer with my co-Counsel,
3 please.

4 JUDGE STECKLER: Certainly. We will go off the
5 record for a moment, please.

6 *[Off the record]*

7 JUDGE STECKLER: Back on the record, please?

8 Mr. Niew, do you have any more questions?

9 MR. NIEW: Yes.

10 JUDGE STECKLER: Okay.

11 Q BY MR. NIEW: Joe, we are going to show you parts of
12 Exhibit R-4. They will show up on the screen very
13 shortly.

14 A Okay.

15 Q You have Exhibit 4(c) in front of you.

16 A Okay.

17 Q Can you tell me what that is?

18 A That is a text message that I went to run the John
19 Deere 290 White, and it was not full of fuel or greased
20 when I got to the machine. I wanted to know who ran it
21 last, and why it was not done.

22 Q And does that Exhibit 4(c), tell you who ran the
23 machine before?

24 A Yes. Down there --

25 JUDGE STECKLER: Mr. Needham, I can only see your

1 eyes.

2 THE WITNESS: Oh, okay, yeah. I am having trouble
3 seeing the screen at this angle, Judge.

4 JUDGE STECKLER: Okay.

5 THE WITNESS: That is why I am moving it.

6 JUDGE STECKLER: Okay. I know you have got to look
7 through the bottom of your glasses?

8 THE WITNESS: Yeah.

9 JUDGE STECKLER: So you said it was Lefty?

10 THE WITNESS: *[No audible response]*

11 JUDGE STECKLER: Okay.

12 THE WITNESS: Adam VanOpDorp's nickname was Lefty,
13 yes.

14 JUDGE STECKLER: Okay, you can move back.

15 THE WITNESS: Thank you.

16 JUDGE STECKLER: So that is -- what is the exhibit
17 number on that, Mr. Niew?

18 MR. NIEW: That is Exhibit R-4 --

19 JUDGE STECKLER: Exhibit R-4(c)?

20 MR. NIEW: Exhibit R-4(c), yes.

21 JUDGE STECKLER: Okay. I am also going down to look
22 at it a little closer.

23 Okay, Mr. Niew, continue.

24 Q BY MR. NIEW: Yes. On 4(c), it shows that there is a
25 Casie Morehead. Was Casie Morehead the recipient of that

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 document?

2 A No, it was not. She was not.

3 Q Who was?

4 A Jeff Dunleavy.

5 Q And how did it become Casie Morehead instead of Jeff
6 Dunleavy?

7 A When Jeff left that fall, I believe it was the fall
8 of '19, he left the Company and we hired Casie. Whenever
9 we hired her, she took Jeff's phone, and the exact years
10 that I changed my name in the phone from Jeff Dunleavy to
11 Casie Morehead.

12 Q You said the fall of '19 --

13 A Well, if I think about that, that was wrong. It had
14 to be the fall of '18.

15 Q Okay.

16 A It had to be the fall of '18.

17 Q Thank you.

18 We are going to show you another exhibit, and do you
19 have Exhibit R-4(d) in front of you?

20 A Yes.

21 Q Can you explain what that is?

22 A It is a machine that the cab did not get closed up on
23 that day.

24 Q And who are the recipients of this e-mail, or this
25 document?

1 A Boo, Jeff Dunleavy, Adam, and myself.

2 Q Boo being --

3 A Daniel, yes.

4 JUDGE STECKLER: What year was that, Mr. Needham?

5 THE WITNESS: It had to be -- I am 99 percent sure it
6 was 2019. Yes, it was. It was 2019.

7 JUDGE STECKLER: Was Jeff Dunleavy still there?

8 THE WITNESS: No.

9 Well, hold it. Maybe --

10 JUDGE STECKLER: So you don't really know what year
11 that was, do you?

12 THE WITNESS: I can tell you what job it was, and
13 where the machine was sitting, but, no, I do not.

14 JUDGE STECKLER: Okay.

15 THE WITNESS: I can -- the only thing that confuses
16 me is why seeing -- why Casie is on there.

17 JUDGE STECKLER: Okay.

18 THE WITNESS: She --

19 JUDGE STECKLER: But didn't you just say that when
20 you changed Jeff Dunleavy, it changed everything to Casie?

21 THE WITNESS: Correct.

22 JUDGE STECKLER: Okay, so you don't know whether that
23 is Casie or --

24 THE WITNESS: Correct, because I am not sure of the
25 year.

1 JUDGE STECKLER: Okay.

2 Mr. Niew, you may continue.

3 Q BY MR. NIEW: Is one of the recipients of 4(d) Curt
4 McKinley?

5 MS. LaROSE: Objection.

6 JUDGE STECKLER: What is the objection, Ms. LaRose?

7 MS. LaROSE: It's okay, Your Honor. I will withdraw
8 it.

9 JUDGE STECKLER: Mr. Niew, I would ask that you
10 please limit your leading there.

11 THE WITNESS: I would -- I would --

12 JUDGE STECKLER: Mr. Needham, Mr. Needham, there is
13 no question at this time.

14 THE WITNESS: Oh, okay.

15 JUDGE STECKLER: I know you are trying to be helpful,
16 but you know --

17 THE WITNESS: I thought the question was still there.

18 JUDGE STECKLER: No.

19 THE WITNESS: Okay.

20 MR. NIEW: I withdraw the prior question.

21 Q BY MR. NIEW: Joe, looking at the top of Exhibit
22 4(d), can you tell what names are there by the initials?

23 A Daniel, Casie or Jeff, I believe, AV would have been
24 Adam, and D is "Dad."

25 Q Okay.

1 A Okay, that -- that picture is not from my phone.

2 That is where I am confused at.

3 Q From whose phone is it?

4 A Whoever has gotten the -- I took the picture, Joe
5 Needham did. Whoever has gotten in the phone, that -- I -
6 - I don't understand this whole window. I know I was out.
7 I know that I found it. I know that I took the picture.
8 After that, I do not know where this e-mail come from or
9 whose phone it was.

10 JUDGE STECKLER: Thank you, Mr. Needham.

11 THE WITNESS: Or text message; not e-mail.

12 MR. NIEW: Your Honor, no further exhibits for this
13 witness.

14 JUDGE STECKLER: Okay, any additional questions?

15 MR. NIEW: No further questions.

16 JUDGE STECKLER: Okay, Mr. Williams, any questions?

17 MR. WILLIAMS: Yes.

18 CROSS EXAMINATION

19 Q BY MR. WILLIAMS: Mr. Needham, going back to, I
20 believe it was Respondent's Exhibit 4 -- what was it,
21 4(c), regarding the fueling of the equipment.

22 How did you know that that involved Adam VanOpDorp?

23 A The text message I just looked at, is that what we
24 were -- the --

25 Q The first one.

1 A Yes. I did not.

2 Q Okay.

3 *[Talking over each other]*

4 A I did not know --

5 Q Hold on. How did you know that that was Adam
6 VanOpDorp?

7 A When I sent that original text, I texted Jeff and
8 whoever else was on that, to find out who the last person
9 was that ran that machine, and when I sent that first text
10 out, I did not know it was Adam. I did not know who it
11 was.

12 Q And did you subsequently find out that it was Adam
13 VanOpDorp?

14 A Yes. And later on --

15 Q And --

16 A And later on in them text messages, they said it was
17 Lefty. If you read the text messages, the series of them.

18 Q And was Adam VanOpDorp ever disciplined for that?

19 A He had to go re-do it.

20 Q Was he disciplined --

21 A No, I did it.

22 Was he disciplined?

23 Q Yes.

24 A No. He was just told that he should not do it again.
25 I guess I don't know what you want to call discipline.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay.

2 A I just --

3 Q There is not -- there is no other question before
4 you, sir.

5 A Okay.

6 Q With respect to, I guess, the missing -- the next
7 text that has to do with replacing the, I guess, a missing
8 window?

9 A Yes.

10 Q The piece of equipment?

11 A Yes.

12 Q Was Mr. VanOpDorp disciplined for that that you can
13 recall?

14 A No. Just brought it to his attention.

15 Q Okay. Now, you -- you said in your testimony, and
16 correct me if I am wrong, that on July 1st, 2019, Chad
17 Havill arrived at Needham Excavating and you asked him if
18 he had left the Dan Dolan jobsite early.

19 A It was on or about July 1st, yes.

20 Q Okay.

21 A I cannot swear to the date without the information in
22 front of me.

23 Q Okay, and is it your testimony that on or about July
24 1st, 2019, you asked Chad Havill if Adam left the Dan
25 Dolan's jobsite early.

1 A Yes.

2 Q And Chad Havill -- it is your testimony that Chad
3 Havill, in response, said yes?

4 A Yes.

5 Q And is it also your testimony that on July the 8th,
6 you asked Chad Havill if Adam left the Dan Dolan's jobsite
7 early?

8 A Yes. I double-checked with him.

9 Q And is it -- is it your testimony that Chad Havill
10 responded yes?

11 A Yes.

12 MR. WILLIAMS: I have no further questions for this
13 witness, Your Honor.

14 JUDGE STECKLER: Ms. LaRose?

15 MS. LaROSE: Can I have just a minute please, Your
16 Honor?

17 JUDGE STECKLER: Yes, let's go off the record for a
18 moment.

19 *[Off the record]*

20

21 THE COURT REPORTER: Back on, Your Honor.

22 JUDGE STECKLER: Mr. Williams, you had a couple
23 additional questions?

24 MR. WILLIAMS: Yes.

25 Q BY MR. WILLIAMS: Mr. Needham, the conversation that

1 you testified to that you had with Chad Havill on or about
2 July 1st, 2019, about the Dan Dolan's job, were you and
3 only Chad present during that conversation?

4 A I'm not a hundred percent sure. We were standing in
5 Curt's office doorway when we had that. I -- I am not --
6 I cannot swear if Curt was sitting in his chair or not, or
7 if it was just Chad and I, and we were waiting for Curt to
8 come back.

9 Q Okay. And the -- and your testimony about the
10 conversation you had with Chad Havill on July the 8th,
11 2019, was that -- was that by phone?

12 A It was either phone or text. I don't -- I cannot
13 recall.

14 MR. WILLIAMS: Thank you. No more questions, Your
15 Honor.

16 JUDGE STECKLER: Ms. LaRose?

17 MS. LaROSE: Thank you.

18 CROSS EXAMINATION

19 Q BY MS. LaROSE: Mr. Needham, do you remember
20 testifying at the "RD" de-certification proceeding around
21 April 11th, 2017?

22 A I was there. I don't know what I remember about it,
23 if that is the dates.

24 Q Okay. And do you remember testifying that "[Voice
25 *transmission garbled*] has an excavator now that you can

1 run on GPS, that controls grade by itself, which means" --

2 A I -- sorry.

3 Q "...which means you can put it in the automatic mode
4 and push the stick or the boom lever down and pull in on
5 the bucket and the stick, and it keeps -- the machine runs
6 itself, and it keeps the grade level at the bottom, and we
7 are looking at purchasing something along that line. So I
8 sent my two best guys up to evaluate what they thought of
9 the machine."

10 And then someone asked you, "And those two people are
11 whom?"

12 And your answer was, "Adam and Jake."

13 Do you recall that testimony?

14 MR. NIEW: Objection, beyond the scope. It should
15 have been asked the first time he was on the stand.

16 JUDGE STECKLER: Ms. LaRose, do you have a response?

17 MS. LaROSE: This examination has been replete with
18 criticisms of Adam going all the way back to 2017, so I
19 think it is proper, Your Honor.

20 JUDGE STECKLER: Objection overruled. You may
21 continue.

22 You may answer the question, Mr. Needham.

23 Do you recall giving that testimony?

24 THE WITNESS: Not -- no, I don't. I guess, the first
25 question I got back to -- Ms. LaRose, the first part of

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 that was it the Komatsu excavator you said when you asked
2 me the question, or was it my statement the Komatsu
3 excavator, or Komatsu had that option out now? I don't --
4 you were garbled.

5 Q BY MS. LaROSE: Garbled?

6 A Yeah.

7 Q Yeah, that is what it seems to be addressing.

8 A Yeah, that was Komatsu.

9 Yes, at that time, I very well could have said it. I
10 could not say one way or the other.

11 Q Okay.

12 A Yeah, I don't remember the exact conversation.

13 Q Okay, why don't we put what has been marked as
14 Union's Exhibit 87?

15 **(Union's Exhibit 87, marked for identification.)**

16 Q BY MS. LaROSE: Mr. Needham, would you look at the
17 bottom part of that page, and just confirm for me that you
18 do or do not recall that testimony, starting with Line 13.

19 A If that is my sworn testimony, I cannot remember
20 saying that, but -- a hundred percent.

21 Q You don't have any reason to deny that it is your
22 testimony, right?

23 A Yes, correct.

24 Q I mean, at that time, when you testified on that
25 date, it is consistent with your beliefs in that

1 timeframe, that Adam and Jake were your two best guys,
2 right?

3 A Two of my best guys; not the only two best guys, but
4 they are two of the best guys, yes.

5 Q Well, it says, "I sent my two best guys." It doesn't
6 say, "I sent two of my best guys," right?

7 A Okay, yeah.

8 Q I mean, you can read it just as well as I can.

9 A I agree.

10 Q Okay. All right.

11 MS. LaROSE: Your Honor, I am -- I am going to move
12 to admit this, Union's Exhibit 87.

13 JUDGE STECKLER: Do we have a front page for the
14 transcript so that we can verify?

15 MS. LaROSE: You know, we don't on there, Your Honor.
16 I am very sorry. The copy I have in my notebook here
17 does.

18 I will -- I will put that on there, and I will also
19 attach the piece that shows where his testimony started
20 for the day, and ended --

21 JUDGE STECKLER: okay.

22 MS. LaROSE: Along with the page numbers of his
23 testimony, and I will re-upload that, or upload it for the
24 first time. I am not sure if it is up there, yet.

25 JUDGE STECKLER: Okay.

1 MS. LaROSE: Those are all of my questions for Mr.
2 Needham.

3 JUDGE STECKLER: Mr. Needham, I did have a few
4 questions about K & K.

5 EXAMINATION BY THE COURT

6 JUDGE STECKLER: You have told us that you picked it
7 up in 2016 after Nick's divorce, correct?

8 THE WITNESS: Correct.

9 JUDGE STECKLER: And it was retroactive to the
10 beginning of that year, correct?

11 THE WITNESS: Correct.

12 JUDGE STECKLER: Okay, the --

13 THE WITNESS: The financial responsibility was.

14 JUDGE STECKLER: Financial responsibility, all right.
15 Did you file any new Articles of Incorporation or LLC
16 agreement at that time?

17 THE WITNESS: I would have to talk to my lawyer that
18 takes care of that. They take care of that stuff, and
19 they always make sure that everything is correctly done.

20 JUDGE STECKLER: Okay, and did you advise your
21 attorney or CPA that you wanted K & K dissolved?

22 THE WITNESS: What timeframe?

23 JUDGE STECKLER: 2019?

24 THE WITNESS: 2019?

25 JUDGE STECKLER: Yes, sir.

1 THE WITNESS: No. I made a mistake of assuming that
2 when it shut down that it got taken care of, because the
3 CPA knew about it, and I had talked to my CPA, Dustin
4 Kimball, and he said, "Well, I thought David Franks had
5 taken care of it."

6 And me being a business person, and just letting them
7 guys take care of the stuff that I pay them for, it fell
8 through the cracks.

9 JUDGE STECKLER: Okay, so as of right now, there is
10 no Articles of Dissolution for -- for K & K; is that
11 correct?

12 THE WITNESS: No.

13 JUDGE STECKLER: And no notices were sent out to the
14 public that K & K is officially gone, correct?

15 THE WITNESS: Correct.

16 JUDGE STECKLER: And as Needham Excavating allegedly
17 operating K & K, are you still doing business with any
18 other companies, besides yourself, for your repairs.

19 THE WITNESS: Yes, but very limited.

20 JUDGE STECKLER: What does it mean, "very limited?"

21 THE WITNESS: Just to -- how can I say it? It is to
22 the people that work for us and take care of us, friends.
23 One of them is Turkle Tree Service that does our tree
24 removal and stuff. We still do some work for Jeff.

25 JUDGE STECKLER: Jeff who?

1 THE WITNESS: Turkle.

2 JUDGE STECKLER: Okay.

3 THE WITNESS: Turkle Tree Service, yes. We still do
4 some work for him.

5 JUDGE STECKLER: Do you do work for Tim Hamann also?

6 THE WITNESS: If Tim needs help, yes. Yes.

7 JUDGE STECKLER: Okay, no further questions from me
8 at this point.

9 Mr. Niew, any questions?

10 MR. NIEW: Yes, I have a follow-up question.

11 FURTHER REDIRECT EXAMINATION

12 Q BY MR. NIEW: When you were shown that transcript a
13 minute ago by Ms. LaRose, the Komatsu, what -- when did
14 that conversation take place? What year?

15 A She said it was at -- that transcript was from 2017.
16 I don't know what date, but I believe that is what Ms.
17 LaRose said about that.

18 Q No, your best recollection, when were you talking
19 about purchasing a Komatsu machine?

20 A That was fully automatic?

21 Q I don't know. You have to tell us.

22 A Repeat the question again, because --

23 Q Okay, in the transcript that you were read, you were
24 talking about a Komatsu machine. When did you originally
25 have that conversation? What year?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A When Komatsu come out with a fully-automatic machine,
2 I heard it from one of my competitors when I was talking
3 to him one day, that they had a 200-size excavator on the
4 job, and they said it was very impressive. It was fully
5 automatic.

6 So, we have always been, or tried to be, a company
7 that leads on technology, so in 2017, we could have sent
8 somebody up to -- to run the Komatsu. I remember vaguely
9 about sending guys up to Cedar Rapids to run one.

10 MR. NIEW: No further questions, Your Honor.

11 JUDGE STECKLER: Mr. Williams?

12 MR. WILLIAMS: No questions, Your Honor.

13 JUDGE STECKLER: Ms. LaRose?

14 MS. LaROSE: No further questions, Your Honor.

15 JUDGE STECKLER: All right, Mr. Needham, for the
16 third time, you are being excused.

17 Thank you for joining us today. I hope you have a
18 good lunch shortly.

19 Please do not discuss your testimony with anyone
20 until after this hearing is over. Is that clear?

21 THE WITNESS: Yes.

22 JUDGE STECKLER: Thank you for your time.

23 We will go off the record to discuss lunch.

24 [Off the record]

25 THE COURT REPORTER: We are on.

1 JUDGE STECKLER: Thank you, Mr. Molinaro.

2 Mr. Niew, please call your next witness.

3 MR. NIEW: Curt McKinley, Curtis McKinley.

4 JUDGE STECKLER: Mr. McKinley, did you testify
5 earlier in this matter?

6 THE WITNESS: Yes, ma'am.

7 JUDGE STECKLER: And you understand that you are
8 still under oath?

9 THE WITNESS: Yes, ma'am.

10 (Whereupon,

11 **CURTIS MCKINLEY**

12 having been previously sworn/affirmed, was recalled as a
13 witness herein, and was further examined and testified via
14 video-conference, as follows:)

15 JUDGE STECKLER: Are you in a room with the door open
16 or shut?

17 THE WITNESS: It is closed.

18 JUDGE STECKLER: Are you by yourself?

19 THE WITNESS: Yes, ma'am.

20 JUDGE STECKLER: Have you discussed your testimony
21 with anyone since you previously testified?

22 THE WITNESS: No, ma'am.

23 JUDGE STECKLER: Have you reviewed any documents
24 since you previously testified?

25 THE WITNESS: No, ma'am.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Okay, thank you.

2 You may proceed, Mr. Niew.

3 DIRECT EXAMINATION

4 Q BY MR. NIEW: Curt, I would like to go back to the
5 July 1st date.

6 Do you remember what happened that day in the
7 afternoon?

8 A That day in the afternoon is the day that Chad Havill
9 came into the shop, and told me about Adam VanOpDorp
10 leaving at 3:30 in the afternoon from the Dolan job, and
11 Chad was at the shop getting grease and some parts for the
12 job.

13 Q Just to clarify, that was 7-1-19?

14 A Yes, sir.

15 Q Who was present during that conversation?

16 A That was just Chad and I.

17 Q Were you present in any other conversations where
18 Havill made leaving early remarks?

19 A Not that I recall.

20 Q I would like you to go to July 10, I believe, the
21 firing date of Adam.

22 A July 8th?

23 Q July 8th, sorry, yes.

24 A Okay.

25 Q I think you testified previously that you collect the

1 timecards?

2 A Yes, sir.

3 Q On July the 8th, what timecards were you missing, if
4 any?

5 A I was just missing Adam VanOpDorp's time.

6 Q When you out to the project to collect Adam's
7 timecard, do you recall that?

8 A Yes, sir.

9 Q Tell us what happened.

10 A I was checking jobs that morning and after I checked
11 my jobs, I stopped by the Dolan job. I talked with Adam
12 previously to see if I could stop in and pick up the
13 timecard, because his was the only timecard I didn't have
14 when I was in the office that morning, and he said, "That
15 was fine," and I stopped by, and we had a quick "hi" and
16 "bye." I had to go, so I grabbed his timecard and left.
17 There wasn't much said on the job, and I left.

18 Q When you picked up the timecard from Adam, did he
19 complete it in front of you?

20 A No, it was already completed. I wasn't there very
21 long, Stan. I had other stuff to do.

22 Q What did you do next after you got that timecard?

23 A I went to another job to check on another job, and
24 then I went back to the shop -- to the office.

25 Q Did you ever make a comparison of the timecard and

1 what Chad Havill told you?

2 A Yes, when I got back to the shop to do time, when I
3 went through the timecards, I noticed that Adam's time and
4 Chad's time were not the same.

5 Q Did you make a decision -- I will withdraw that.

6 When did you make a decision that Adam falsified his
7 timecard?

8 A When I was looking at the time, I noticed that the
9 hours were not correct from talking with Chad the previous
10 week before, is when I noticed that the time was
11 falsified, and that's when I went and talked to Nick about
12 it.

13 Q Did you make a decision to fire Adam independently,
14 or was it after you talked to Nick?

15 A It was later that day when we found out about the
16 11th Street project is when that discussion went.

17 Q Refresh my recollection.

18 What role did you play on the 11th Street project?

19 A On the first phase, I had no role in it. On the
20 second phase, I was the manager on the 11th Street
21 project.

22 Q And when did the second phase take place?

23 A It should be the summer-spring of '19.

24 Q And when did, or how did you learn about the error or
25 omission on the 11th Street project?

1 A I learned that day. Nick told me that Adam, or Erin
2 Brunner, I'm sorry, gave a call to Nick, and she was the
3 Inspector on the 11th Street job, and told him that the
4 pipe that Adam laid out of the last manhole from Phase 1,
5 had backfall on it, and that we had to go back and re-lay
6 that pipe, tear concrete out, and -- before we could start
7 the Phase 2 of the project.

8 Q Did you ever cut anybody's salary or wages?

9 A Yes, I have.

10 Q And who might that be?

11 A Jason Faulcks and my brother Clint.

12 Q Under what circumstances did you cut Jason Faulck's
13 salary?

14 A The reason I cut his salary was because he didn't
15 want the responsibilities that went with the pay that he
16 was receiving, so his pay reflected that.

17 Q Do you remember approximately when that happened?

18 A Approximately, the summer of '18.

19 Q And did you ever restore his salary back to its
20 original level?

21 A Yes.

22 Q And how long after you cut his pay?

23 A It was several months after that, Stan.

24 Q What caused the change?

25 A I told him that when I cut his pay, when he was --

1 wanted the responsibilities back to do his job that went
2 with the pay, that I would give him the pay back. So...

3 JUDGE STECKLER: Mr. McKinley, he didn't want the
4 responsibilities commensurate with the pay. Did I
5 understand that --

6 THE WITNESS: Yes, ma'am.

7 JUDGE STECKLER: -- correctly?

8 THE WITNESS: Yes.

9 JUDGE STECKLER: What happened that led to that
10 discussion?

11 THE WITNESS: I don't know if he -- I know that Jason
12 Faulcks can get -- he can get a little "itchy," I would
13 say, and gets worried a lot. So he had a bad day one day
14 and was just tired of it, and we had a conversation, and
15 he just -- he didn't want the responsibility anymore, and
16 I told him, "Well, when you feel comfortable doing that,"
17 I said, "I will give that pay back to you," and me and him
18 agreed to that.

19 JUDGE STECKLER: Okay, so it wasn't based on any type
20 of thing that he had done incorrectly, correct?

21 THE WITNESS: No, ma'am.

22 JUDGE STECKLER: I mean, anything that he had done
23 wrong.

24 THE WITNESS: No.

25 JUDGE STECKLER: Thank you.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 I am sorry to interrupt, Mr. Niew. You may continue.

2 Q BY MR. NIEW: Now, you said you cut your brother's
3 salary. When was that?

4 A December of '20.

5 Q And for what reason?

6 JUDGE STECKLER: Was that Clint?

7 THE WITNESS: Yes, ma'am, Clint McKinley.

8 JUDGE STECKLER: And when did you say, Mr. McKinley?

9 THE WITNESS: It was December of '20.

10 JUDGE STECKLER: Thank you.

11 Q BY MR. NIEW: And why did you cut his salary?

12 A For the same reason, Stanley. He did not want the
13 responsibilities anymore of -- of doing his job, and being
14 a -- kind of a lead man on stuff.

15 Q Do you know Timothy Hamann?

16 A Yes.

17 Q And how do you know him?

18 A He is a friend of mine, and an employee of Needham
19 Excavating.

20 Q How did he come to be hired by Needham Excavating?

21 A In the spring of '19, we were -- it was a very wet
22 season, a wet spring, and we were very busy and trying to
23 get caught up on work, and we called Tim and -- to see if
24 he could help us out, and he agreed to that, and so he
25 came and ran equipment for us and did whatever we needed

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 him to do.

2 Q When you say "we called him," who called him?

3 A I called him.

4 Q And what did you tell him?

5 A I told him -- I asked him if he was able to help us
6 out on some jobs to get going, and possibly throughout the
7 year, and whenever we needed him for something, if he
8 could help out at any time that he had a chance, and he
9 agreed to that.

10 Q Did Tim Hamann have another company?

11 A Yes, he has his own company, County Line Excavating.

12 Q Was -- did County Line Excavating do work for Needham
13 Excavating?

14 A No.

15 Q Who did it do work for?

16 A He does -- most of his work is for farmers. He does
17 a lot of tiling, so most of his work is farm work.

18 JUDGE STECKLER: Explain to me what "tiling" is,
19 please.

20 THE WITNESS: Tiling is running black perforated pipe
21 in fields to get rid of the water in the fields.

22 JUDGE STECKLER: So it is kind of like a reverse
23 irrigation?

24 THE WITNESS: Yeah, basically; taking away the water
25 instead of adding water, yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Thank you.

2 Mr. Needham, you may continue.

3 Q BY MR. NIEW: Was there a time when Adam complained
4 towards the end of his employment about working on the
5 job, that he felt that he was too good for?

6 A Yes. On the Coca Cola project, Adam and I got into
7 it about him being on the black dirt crew, and that he was
8 too good of an operator to be doing that job.

9 Q And how did you respond, if at all?

10 A I responded that everybody has to do dirt work, and
11 it was not just himself. I mean, our whole crew does it.

12 Yes, it is a mindless job, but with the situation
13 that Adam left us in, him -- all of the screw-ups that he
14 had putting pipe in, it really didn't give me much option
15 on where to put him.

16 Q Now, I think you -- let me re-ask the question.

17 How long have you been working for Needham
18 Excavating?

19 A Since about 1998.

20 Q Now, going back to the 11th Street project, in --
21 since 1998, have you ever seen an error or omission to the
22 magnitude of the 11th Street project?

23 A Not the 11th Street project, no.

24 Q Was there any other project that you can recall where
25 there was an operator error or omission that couldn't be

1 corrected in eight hours?

2 A No.

3 [Long pause]

4 Q Did you have any involvement on the 18th Street
5 project?

6 A Any involvement I had on the 18th Street project was
7 to go back and re-install the pipe that Adam installed
8 incorrectly.

9 Q And was that a -- how would you describe that as a
10 bigger screw-up, or a smaller one than the 11th Street?

11 A That was way bigger than the 11th Street.

12 Q And when did you learn about the 18th Street project?

13 A It had to have been in the fall of '18.

14 Q And did you take any action against Adam for that
15 screw-up?

16 A No, with Adam being a long-time employee, Stan, I
17 mean, we talk about firing the whole crew after that
18 incident, but with Adam being the lead man and him being
19 around for so long, we kind of gave him a "pass" on that.
20 You know, he has been around and he is kind of like
21 family. So, we kind of let that one go for the time.

22 Q Now, you were the person who let Brett Gripp go;
23 would that be correct?

24 A That's correct.

25 Q Did -- what were the reasons that you gave Brett

1 Gripp for letting him go?

2 A The reason that I gave Brett that we let him go, was
3 that we didn't have the work for him.

4 Q In the big scheme of things, were there other reasons
5 that you did not explain to Brett?

6 A Yes.

7 Q What are they?

8 A Well, Stan, if it was up to Joe, we would have let go
9 of Brett many months before I did.

10 Brett has got -- from the time that Brett was hired,
11 Joe told us he wished that we would have talked to him
12 before we hired him, because he has got a mouth on him,
13 and months later, Brett made a snide comment to Joe
14 Needham, and then made a snide comment to another
15 employee, and Joe wanted to let go of Brett then, but the
16 reason we didn't let him go then, was because our spring
17 of 2019 we were so busy, we needed as much help as we
18 could get, and we told Joe that as soon as we were out of
19 truck driver work and it slowed down, that he would be the
20 first one to go.

21 Also, Joe and him have mutual friends, so we were
22 just trying to keep the peace, and that's the reason why I
23 told him that we would let him go was that we had ran out
24 of work for him, and that is why we let him go.

25 Q Did you ever park a vehicle anywhere at or near Brett

1 Gripp's house?

2 A No. I don't even know where Brett Gripp lives, Stan.

3 Q Did you ever instruct any present or former employee
4 of Needham to go park a vehicle at or near Brett Gripp's
5 house?

6 A No.

7 Q And did anybody from the management of Needham tell
8 you that they instructed an employee to go park a vehicle
9 near Brett Gripp's house?

10 A No.

11 Q In 2019, what kind of vehicle were you driving?

12 A I was driving a Chevy, a white Chevy 2500.

13 Q And that is a pickup truck, right?

14 A Yes, sir.

15 Q Did you have any lights on the truck?

16 A No, sir.

17 JUDGE STECKLER: Mr. McKinley, what were you driving
18 in the spring of 2020?

19 THE WITNESS: Same truck, ma'am. I have the same
20 truck.

21 JUDGE STECKLER: Thank you.

22 Q BY MR. NIEW: Now, did the union activity, in any
23 way, play a role in the termination of either Adam or
24 Brett?

25 A No.

1 Stan, if that would have played a role in any of
2 this, why wouldn't we have fired him in April of 2019, and
3 for that fact, Aaron Hamilton is another one. He
4 willingly told us in 2017, after the first election, that
5 he voted for the Union, and he still works for us. That
6 has no play -- and as far as Brett is concerned, I knew
7 nothing about Brett and any union activity until after I
8 let him go.

9 Q Did -- I want you to assume that there was no union
10 activity, would Adam and Brett have been fired even absent
11 union activity?

12 A Yes. I mean, Brett -- Adam, I don't know what
13 company would keep somebody around if they cost them
14 hundreds of thousands of dollars on the 18th Street
15 project, and then the continuations of smoking in the cab
16 and talking on the phone, and bending a laser pole on a
17 dozer, running over ADA panels, the 11th Street project,
18 and then falsifying timecards, all within six to nine
19 months of each other? I mean, that all just led up to
20 that.

21 And then, as far as Brett, you know, with his mouth
22 and lack of ability to do all of the work, lack of skills,
23 I mean, it was inevitable that they were both going to be
24 gone.

25 Q Do -- do you remember the de-certification election

1 in 2017?

2 A Yes.

3 Q Were there any persons laid off by Needham Excavating
4 after that July 2017 election?

5 A Just Brett Gripp in 2019.

6 Q After the recent union election in 2019, was anybody
7 fired by --

8 I will just withdraw that. Let me restart.

9 After the union election in 2019, was anybody fired?

10 A Just Adam.

11 MR. NIEW: Your Honor, may I have about two minutes
12 with my co-Counsel?

13 JUDGE STECKLER: Yes, we will go off the record.

14 Mr. McKinley, you can get up and walk around a little
15 bit, but just stay there. Don't talk to anybody.

16 Off the record.

17 *[Off the record]*

18 JUDGE STECKLER: Back on the record. Mr. Niew?

19 MR. NIEW: Yes.

20 Q BY MR. NIEW: Curt, I'd like you to walk us
21 through the day of the firing, June 10th. What happened
22 from the morning until you left to go home?

23 JUDGE STECKLER: Mr. Niew, whose firing is on June
24 10th?

25 MR. NIEW: Brett Grippe.

1 JUDGE STECKLER: That was a layoff, correct?

2 MR. NIEW: Correct. I'm sorry. I wanted Adam's
3 firing, sorry.

4 JUDGE STECKLER: Okay. So in July?

5 THE WITNESS: July 8th.

6 MR. NIEW: July 8th. Sorry. It was my fault.

7 Q BY MR. NIEW: I'd like you to walk through what
8 happened on July 8th from the morning until the end of
9 the day when you left.

10 A In the morning I came into the office to check
11 timecards to make sure I had everybody's timecards that
12 morning. The only timecard I didn't have was Adam's. I
13 left the shop and went to go check job sites, gave Adam
14 a call, asked him if he had his timecard, and he said he
15 did. I said I'd stop by after I got done checking jobs
16 and pick it up, and he said okay, no big deal.

17 I stopped at the Dolan job. After I got done
18 checking jobs, I grabbed the timecard from Adam, went
19 back to the office to do time. I went through time and
20 noticed an issue with Adam's timecard not meeting the --
21 or having more hours than what was worked that day. I
22 continued with time, got done with my time, talked with
23 Nick, and Nick proceeded to tell me that the 11th Street
24 project had a screw up on it from Adam. Then I said,
25 well, I had Adam's timecard and his timecard is

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 falsified also.

2 So we had a conversation later that afternoon with
3 Joe, myself, and Nick and Dan, and we decided that
4 enough was enough with Adam after all the incidents that
5 had happened and came to the agreement that we had to
6 let Adam go.

7 Later that day we called Adam in around 4 o'clock,
8 had the conversation with him to let him go, proceeded
9 to go out to the shop, remove all of the tools from
10 Adam's truck that were Needham's. That was pretty much
11 the day.

12 Q I want to go back. Who contacted Adam to tell him
13 to come into the office?

14 A I do believe it was Nick.

15 Q You were in on the termination meeting?

16 A Yes, sir.

17 Q Who did the talking?

18 A Nick.

19 Q Did you say anything?

20 A No, I did not.

21 Q Do you recall what Nick said?

22 A Yes.

23 Q Can you tell us, please?

24 A Nick started off the conversation with Adam about
25 the 11th Street project and how we had to go back and

1 relay the last 20-30 foot that Adam put in on phase I of
2 the job out of the manhole, take the pipe back out,
3 reset the pipe, tear concrete up, the amount of money
4 that it was going to cost us and the time it was going
5 to take to do it. Then he proceeded to tell him that he
6 had falsified timecards and that he put the wrong hours
7 down on the job and that it was basically stealing from
8 us. He then told Adam that he no longer worked for us.
9 He was let go and that he was no longer allowed on
10 Needham property or Needham job sites and told him that
11 he needed to bring his truck around back so we could
12 remove all the tools that were Needham property from his
13 truck.

14 Q In the termination meeting, what, if anything, did
15 Adam say?

16 A The only thing Adam said in the termination meeting
17 was sorry, should have checked my book.

18 Q Now you said that you were going to clean out the
19 truck. Did I hear that correctly?

20 A Yes.

21 Q And that was Adam's truck?

22 A Yes.

23 Q And who pulled the truck into the area?

24 A Adam pulled his truck into the shop.

25 Q And who was with you when the equipment was being

1 taken out or whatever was being taken out?

2 A It was Adam, myself, Nick Needham, and Bill
3 Bouchard.

4 Q Was there any conversation going on while you guys
5 were cleaning out the truck?

6 A Not much conversation at the time. The only thing
7 that was said was that Adam said a few times, two or
8 three times, that if you guys want to play this game,
9 you need to check other timecards because he wasn't the
10 only one cheating on his timecards.

11 JUDGE STECKLER: Were those his exact words, Mr.
12 McKinley?

13 THE WITNESS: Yes, ma'am.

14 Q BY MR. NIEW: Did you ever say in private or in
15 public to Adam or anybody else the cat's out of the bag,
16 we know the union is around?

17 A Excuse me? The cat's out of the bag?

18 Q Yes.

19 A No.

20 MR. NIEW: Your Honor, can I have one second,
21 please?

22 JUDGE STECKLER: Yes, but we'll stay on the record
23 for one second then.

24 Q BY MR. NIEW: Curt, I'd like you to go back to the
25 layoff date of Brett Gripp. When you laid him off, did

1 you make any statements to Brett Gripp?

2 MR. WILLIAMS: Objection, Your Honor. Asked and
3 answered.

4 JUDGE STECKLER: Sustained.

5 Q BY MR. NIEW: Did you ever say under your breath
6 to either Brett or anyone else that the cat's out of the
7 bag, and we know you're talking to the union or anything
8 to that effect?

9 A Absolutely not.

10 MR. NIEW: No further questions, Your Honor

11 JUDGE STECKLER: Mr. Williams?

12 MR. WILLIAMS: Yes.

13 CROSS-EXAMINATION

14 Q BY MR. WILLIAMS: Mr. McKinley, you testified that
15 on July the 1st that Chad Havill came into the shop. Do
16 you remember what time he came into the shop?

17 A It was approximately 4 o'clock in the afternoon

18 Q And you testified that he told you that Adam had
19 left the Dan Dolan job at 3:30?

20 A Yes, sir.

21 Q Did he say what time he left the Dan Dolan job?

22 A They left at the same time at 3:30 is what he told
23 me.

24 JUDGE STECKLER: How far away was the project to
25 the office?

1 THE WITNESS: It's about 25 minutes to a half-
2 hour.

3 JUDGE STECKLER: Go ahead, Mr. Williams. I'm
4 sorry to interrupt.

5 MR. WILLIAMS: That's okay.

6 Q BY MR. WILLIAMS: On July 8th, 2019 you said you
7 called Adam to see if you could pick up his timecard.
8 What time did you call?

9 A I would say it was probably approximately 8 or 9
10 o'clock in the morning.

11 Q And what time did you actually arrive at the job
12 site?

13 A I would say around 10 o'clock.

14 Q And when you asked for his timecard, did you have
15 him complete it before he gave it to you?

16 A No, he had it completed when I got there.

17 Q Did you pick up anybody else's timecard?

18 A No, everybody else's timecard was in for that day.

19 Q Do employees normally fill out their timecards in
20 advance of their -- or the completion of their work on
21 the last day of their work week?

22 A The completion date is on --

23 MR. NIEW: Objection. Form.

24 JUDGE STECKLER: I'm sorry? Is there an
25 objection?

1 MR. NIEW: Yes. Objection as to form.

2 JUDGE STECKLER: Why? What's the form?

3 MR. NIEW: Well, it's a vague and non-
4 understandable question.

5 JUDGE STECKLER: Mr. Williams, I think you can
6 proceed. Re-ask the question, please.

7 MR. WILLIAMS: Okay.

8 Q BY MR. WILLIAMS: So the timecard, when do
9 employees normally turn in their timecards?

10 A Time is supposed to be turned in Monday morning.

11 Q Okay. So the timecard reflects the normal work
12 week, Monday through Friday?

13 A Correct. Monday through Saturday.

14 Q Monday through Saturday. Okay. So you're asking -
15 - so just let me see if I can get this -- so you're
16 asking for Mr. VanOpDorp's timecard on Friday. Was he
17 working on Saturday?

18 MR. NIEW: Objection. Mischaracterizes the
19 testimony.

20 JUDGE STECKLER: It's a question, Mr. Niew. Mr.
21 McKinley, you may answer.

22 A BY THE WITNESS: I did not ask for it on Friday.
23 I asked for it on Monday the 1st.

24 MS. LAROSE: I'm going to object to these speaking
25 objections from Mr. Niew just as I did a day or two ago.

1 JUDGE STECKLER: So noted. It certainly will go
2 to the credibility discussion in your briefs.

3 MS. LAROSE: Thank you, Your Honor.

4 Q BY MR. WILLIAMS: Okay. So you asked for his
5 timecard on July the 1st, Monday the 1st.

6 A Monday, July 8th.

7 Q Okay. Well, you just said the 1st.

8 A I didn't say the 1st. I said July 8th.

9 Q Okay. So you picked up his timecard July 8th?

10 A Yes.

11 Q You arrived at the job site at 10:00 a.m.?

12 A Correct.

13 JUDGE STECKLER: Mr. McKinley, what else did you
14 do that day and about what time? You didn't just do
15 this stuff with Adam, did you?

16 THE WITNESS: No, ma'am. Like I said, I got there
17 in the morning. I usually start my day around 5:30 or
18 6:00 in the morning. I get to the office. On days that
19 I have to do time, I get there, I check time, make sure
20 everybody has their time in, and if they don't, which
21 Adam did not, then I have to get timecards.

22 JUDGE STECKLER: Was he at the same project that
23 he was on the previous week?

24 THE WITNESS: Yes, ma'am. He was at the Dolan
25 job.

1 JUDGE STECKLER: So he's about 25 or 30 minutes
2 away?

3 THE WITNESS: Yes, ma'am.

4 JUDGE STECKLER: Okay. What else did you do?
5 What else did you do besides the Adam --

6 THE WITNESS: I went and checked other jobs that
7 we have going on. Usually we would have anywhere from
8 10 to 15 jobs going on at a time, so there's multiple
9 jobs that I check in the morning. His just happened to
10 be on my way back to the office, and I grabbed his
11 timecard.

12 JUDGE STECKLER: How many truck drivers do you
13 have to support 10-15 projects at one time?

14 THE WITNESS: It all depends, ma'am. I mean
15 sometimes I could have 10 to 15 jobs going and I won't
16 have even one dump truck going, you know. It just all
17 depends on the day or the job that's going on. It could
18 be all dirt work, you know.

19 JUDGE STECKLER: Okay. And what else did you do
20 that day, and we're still talking about the 8th?

21 THE WITNESS: The 8th, yes. So then that day I came
22 back after I got Adam's timecard and I came back to the
23 office to do time. That usually takes me a couple of
24 hours to do. And then I had the conversation with Nick
25 after he heard about the 11th Street project.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: About what time was that?

2 THE WITNESS: I would say a little after lunch,
3 maybe 12:30 or 1 o'clock.

4 JUDGE STECKLER: Okay. Where else were the
5 projects that you visited that day?

6 THE WITNESS: Around Davenport, Bettendorf. I
7 don't recall all of them right offhand, ma'am. Clinton
8 maybe. We had a job in Clinton at that time.

9 JUDGE STECKLER: When you visited the projects,
10 what do you do?

11 THE WITNESS: I go on the job and see what's going
12 on and make sure the guys don't need anything. Just a
13 friendly chat, good morning, you know, if they need any
14 help or if they need any material, what's going on, talk
15 with the superintendent and make sure they don't need
16 anything, and go about my day. I mean it's usually a
17 10- to 20-minute ordeal at a job and then I proceed to
18 the next one.

19 JUDGE STECKLER: Okay. So about how much time did
20 you spend out at the job sites that day?

21 THE WITNESS: I would say I probably left the shop
22 around 7:00, so it was probably two to three hours I was
23 on job sites.

24 JUDGE STECKLER: Okay. So did you go directly to
25 where Adam was to get his timecard, or did you make

1 other stops?

2 THE WITNESS: No, I made other stops.

3 JUDGE STECKLER: Before you got there. Okay.

4 THE WITNESS: Yes.

5 JUDGE STECKLER: Approximately how many miles do
6 you put on a truck in a day like that?

7 THE WITNESS: It varies. It can be anywhere from
8 100 to 300 miles in a day.

9 JUDGE STECKLER: Do you remember about how much
10 mileage you put on your truck that day?

11 THE WITNESS: I know we had the Clinton job going
12 on. I would say that day I probably put on 175 to 200
13 miles.

14 JUDGE STECKLER: Okay. So you drove 175 to 200
15 miles to these different projects.

16 THE WITNESS: Yes. That's a rough guess.

17 JUDGE STECKLER: Stopping at each one. Okay. Mr.
18 Williams, you may take over.

19 Q BY MR. WILLIAMS: So, Mr. McKinley, you made
20 mention of the Coca-Cola job. When did that job start
21 and when did it end?

22 A I don't recall the exact dates on that.

23 Q Was that 2018, 2019?

24 A I do believe it ended in 2019, so it would have
25 started in mid-2018.

1 Q And where is that Coca-Cola job located?

2 A Right close to the I-80 truck stop, Exit 284.

3 Q And where in Iowa?

4 A Walcott.

5 Q And what was Needham Excavating, Inc. supposed to
6 do there? What was that job then?

7 A We did all the dirt work on that project and the
8 utilities, the sewer, water, and storm.

9 Q And what was Adam VanOpDorp's job? What were his
10 duties on that job?

11 A The duties? His duties were to put black dirt down
12 on the job.

13 JUDGE STECKLER: Was he at all involved with
14 putting in the sewers or utilities?

15 THE WITNESS: I don't believe -- he might have
16 done some storm sewer on that project when it first
17 started.

18 JUDGE STECKLER: Okay.

19 Q BY MR. WILLIAMS: And your testimony is that he
20 made the comment to you that he was too good to do that
21 job. When did he make that comment?

22 A His comment was he was too good to be on the black
23 dirt crew.

24 Q Okay. And when was that?

25 A That was in the beginning of 2019.

1 Q So January, February?

2 A No, I would say March of 2019.

3 MR. WILLIAMS: I have no further questions, Your
4 Honor.

5 JUDGE STECKLER: Ms. LaRose?

6 CROSS-EXAMINATION

7 Q BY MS. LAROSE: Mr. McKinley, do you use some kind
8 of application for directions, for map purposes?

9 A No, ma'am.

10 Q Do you have a Google maps account?

11 A No, ma'am.

12 Q You're aware that the company asked the union --
13 I'm sorry, asked Mr. Gripp if he had any evidence of the
14 identity of the drivers in the vehicles near his house.
15 Right, Mr. McKinley?

16 A Can you repeat that, please? You cut out there.

17 Q I'm glad to. You're aware that the company asked
18 Mr. Gripp specifically if he had any evidence about the
19 driver's identity prior to this hearing?

20 A Which driver is that?

21 Q The drivers who apparently parked vehicles in front
22 of his house.

23 A Needham asked that question is what you're asking?

24 Q Yes.

25 A Okay. Yes.

1 JUDGE STECKLER: Wait a minute. I'm a little
2 confused here, Mr. McKinley. Did you just say you were
3 aware that Needham asked Mr. Gripp that question during
4 the hearing?

5 THE WITNESS: No, I thought she was saying had
6 asked the counsel there.

7 JUDGE STECKLER: Ms. LaRose, could you clean that
8 up a little bit for me, please?

9 MS. LAROSE: Sure.

10 Q BY MS. LAROSE: Mr. McKinley, that question was
11 essentially asked through a subpoena served on Mr.
12 Gripp. Is that right?

13 A Yes, I guess.

14 JUDGE STECKLER: Had you seen the subpoena the
15 company sent Mr. Gripp?

16 THE WITNESS: No, ma'am, I have not seen that.

17 JUDGE STECKLER: Have you discussed it with
18 counsel?

19 THE WITNESS: No, ma'am.

20 JUDGE STECKLER: Ms. LaRose, you may continue.

21 MS. LAROSE: Okay.

22 Q BY MS. LAROSE: How many employees did the company
23 have in 2019 who were completing timecards? I'll take
24 an estimate.

25 A I'm guessing around 20 to 30ish.

1 Q And there were employees who turned timecards in
2 late before, correct?

3 A Yes.

4 Q And the timecards aren't actually due on Monday
5 morning, right? They're due sometime on Monday,
6 correct?

7 A That is incorrect. They are due Monday morning
8 before noon.

9 Q And is it my understanding or was it your testimony
10 that every time a timecard is turned in late you go and
11 pick it up from the employees?

12 A If I have to, yes, I will.

13 Q Well, if you have to? I mean if it's not in, you
14 have to, right?

15 A That's correct.

16 Q Okay. So if I'm understanding you correctly your
17 position was that -- what's your title again, Mr.
18 McKinley?

19 A Manager.

20 Q Manager of what?

21 A At Needham Excavating.

22 Q Project Manager?

23 A No. I guess you could call it project manager or
24 superintendent.

25 Q Okay. So you're the superintendent of 15 to 20

1 jobs, and you personally make time to go and collect
2 employees' timecards when they're late. Am I
3 understanding this correctly?

4 A Usually I check every job --

5 MS. LAROSE: I'm sorry, Your Honor. Move to
6 strike as a non-responsive answer.

7 JUDGE STECKLER: Mr. McKinley, as this point, Ms.
8 LaRose is asking essentially yes or no questions, so if
9 Mr. Niew wants to come up and pick it up on the back end
10 he can, so if you wouldn't mind just answering her
11 questions with a yes or no or that I don't understand
12 the question. One of those things is appropriate.

13 A BY THE WITNESS: Can you repeat the question, Liz?

14 Q Sure. You are the superintendent for the company,
15 and if I'm understanding you correctly, as
16 superintendent for 15 to 20 jobs, you were making the
17 time to go and pick up employee timecards on Monday
18 morning. Do I understand you correctly?

19 A Yes.

20 Q And so if three employees are late with timecards,
21 you're potentially making three side trips in the
22 mornings on Mondays? Is that your testimony?

23 A Yes.

24 MS. LAROSE: Can I have just one second, Your
25 Honor?

1 JUDGE STECKLER: Yes. We'll stay on the record
2 while the second elapses.

3 MS. LAROSE: Your Honor, those are all of my
4 questions for Mr. McKinley.

5 JUDGE STECKLER: Mr. Niew, do you have additional
6 redirect?

7 MR. NIEW: I do, Your Honor.

8 REDIRECT EXAMINATION

9 Q BY MR. NIEW: How frequently do you need to go to a
10 job to pick up somebody's timecard?

11 A Not very frequent.

12 Q Does it have --

13 A It could be once a month.

14 Q Now Ms. LaRose said that you would make three side
15 trips. The question is when you go pick up a timecard
16 once a month, is it really a side trip?

17 A No.

18 Q Why not?

19 A Because I'm stopping at the job anyway. Just to
20 clarify, Stan, just because I have 15 to 20 jobs going
21 doesn't mean I have guys at 15 to 20 jobs. That's just
22 some jobs I will stop at and talk with the
23 superintendent on the job just to see what their status
24 is and when they will need us there, so I could only
25 have five crews going, but I have that many jobs going

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 on.

2 Q When you refer to the superintendent, that would be
3 the owner's representative?

4 A That's correct.

5 MR. NIEW: No further questions.

6 JUDGE STECKLER: Mr. Williams?

7 MR. WILLIAMS: No further questions, Your Honor.

8 JUDGE STECKLER: Ms. LaRose?

9 MS. LAROSE: No further questions, Your Honor.

10 JUDGE STECKLER: Let me check my notes. I have no
11 further questions, Mr. McKinley. Thank you for coming
12 in again this afternoon. Once again, please do not
13 discuss your testimony with anybody until after this
14 hearing is over which at this point I cannot even give
15 you an estimate. So talk about something else but this.

16 THE WITNESS: All right.

17 JUDGE STECKLER: Thank you very much for your
18 time.

19 *(Witness excused)*

20 We'll go off the record while Respondent obtains
21 the next witness.

22 *(Off the record)*

23 JUDGE STECKLER: Back on the record. Ms. LaRose?

24 MS. LAROSE: I was going to try to introduce, Your
25 Honor, Union Exhibit 87. I will show -- put it on the

1 screen so that everybody can see what it looks like
2 though. So we have the cover page and then we have this
3 second page of the exhibit which shows the pages where
4 Joe Needham was testifying including page 282, which is
5 the one that I was quoting from on the record. So I'd
6 like to move to introduce that, Your Honor.

7 MR. WILLIAMS: No objection.

8 MR. NIEW: No objection, Your Honor.

9 JUDGE STECKLER: Union's 87 is received.

10 **(Union's Exhibit No. 87 received into evidence.)**

11 MS. LAROSE: Thank you.

12 JUDGE STECKLER: Mr. Niew, you may call your next
13 witness.

14 MR. NIEW: Nick Needham.

15 (Whereupon,

16 **NICK NEEDHAM**

17 having been previously sworn/affirmed, was recalled as a
18 witness herein via Zoom, and was examined and testified
19 as follows.)

20 JUDGE STECKLER: Are you in a room by yourself?

21 THE WITNESS: Yes.

22 JUDGE STECKLER: Door open or shut?

23 THE WITNESS: Shut.

24 JUDGE STECKLER: They won't ask these questions
25 for me. I'm just kidding. You've heard them enough

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 times. Have you discussed your testimony with anybody
2 since the day you testified?

3 THE WITNESS: No, I have not.

4 JUDGE STECKLER: Okay. Mr. Niew, your witness,
5 please.

6 MR. NIEW: Yes.

7 DIRECT EXAMINATION

8 Q BY MR. NIEW: You recall a laser pole being bent?

9 A Yes.

10 Q And that was -- who bent it again?

11 A Adam VanOpDorp.

12 Q Was it able to be repaired?

13 A Yes. It was taken off. Had to take it back to the
14 shop and we had to put it in the press and bend it back
15 and then take it back to town and reinstall it.

16 Q In the history of the company, has a laser pole
17 ever been bent before?

18 A No.

19 Q I'd like you to -- I'm going to show you RX-15,
20 Respondent's Exhibit -- I'm sorry. It's 14.

21 JUDGE STECKLER: Mr. Wright, are you doing the
22 magic on this one?

23 MR. WRIGHT: Yeah. Yes, Your Honor. And Judge, I
24 don't know if now is a good time, but just to clarify.
25 I know I sent out an email on this, but the updated

1 revised bated stamped documents, these exhibits have
2 been uploaded to SharePoint just so that everyone knows
3 that.

4 JUDGE STECKLER: Mr. Needham, just a couple of --
5 well, I'll wait. I'm trying to do everybody's job on
6 questioning, but I'll leave that to Mr. Niew.

7 Q BY MR. NIEW: Can you explain what Exhibit R-14
8 is?

9 A That is an outline that I put together last July.

10 Q And what documents did you use, if any, to prepare
11 that Exhibit 14?

12 A I mean there were text messages involved, there was
13 past performances, there was conversations that were had
14 with city inspectors. I mean it's basically an outline
15 of a lot of Adam's issues.

16 **(Respondent's Exhibit No. 14 marked for identification.)**

17 MR. NIEW: Your Honor, we offer R-14.

18 MR. WILLIAMS: Voir dire if I may, Your Honor.

19 JUDGE STECKLER: Yes, Mr. Williams.

20 VOIR DIRE

21 Q BY MR. WILLIAMS: This document has -- well, when
22 was this document created?

23 A July 15, 2019.

24 Q And so this was created after Mr. VanOpDorp's
25 discharge, correct?

1 A That is correct.

2 MR. WILLIAMS: Your Honor, General Counsel
3 objects. One, this is self-serving, and on the other
4 hand it was created after the events that are relevant
5 and material events occurred.

6 JUDGE STECKLER: Ms. LaRose, do you have any voir
7 dire also?

8 MS. LAROSE: No, Your Honor, but the same
9 objection.

10 JUDGE STECKLER: Mr. Needham, what did you do with
11 this document after you created it?

12 THE WITNESS: I believe I just typed it up for the
13 ULP that we were served from the NLRB.

14 JUDGE STECKLER: Okay. So you made it in response
15 to the ULP when the union filed one regarding Mr.
16 VanOpDorp's termination? Is that correct?

17 THE WITNESS: I believe that is the reasoning
18 behind it, yes.

19 JUDGE STECKLER: Okay. Did you give this to the
20 NLRB during the course of the investigation into Mr.
21 VanOpDorp's termination?

22 THE WITNESS: I honestly don't remember.

23 JUDGE STECKLER: Did you present it to -- I know
24 the union subpoenaed this type of information, and I
25 would assume General Counsel did, too. Did you present

1 it to them as part of the subpoena production?

2 THE WITNESS: I don't recall.

3 JUDGE STECKLER: Can the GC or Union explain to me
4 whether you've seen this before?

5 MR. WILLIAMS: Prior to?

6 JUDGE STECKLER: Prior to this being uploaded.
7 Did you get it as part of your subpoena production?

8 MR. WILLIAMS: Yeah. It's part of -- I'm not sure
9 if it's a response to General Counsel's subpoena since
10 it's after the facts, but I'm not sure if it's in
11 response to General Counsel's subpoena.

12 MR. NIEW: It was a response to General Counsel's
13 subpoena.

14 MS. LAROSE: It was -- I'm sorry, Your Honor.

15 JUDGE STECKLER: Go ahead, Ms. LaRose.

16 MS. LAROSE: We requested Adam VanOpDorp's
17 personnel file. I don't know if it was in there.

18 MR. WILLIAMS: Your Honor, just to be clear, the
19 documents that I have, I'm fine putting the subpoena
20 into -- as an exhibit, but what I asked for were the
21 documents that the employer relied upon to making a
22 decision to discharge Mr. VanOpDorp and layoff Mr. Brett
23 Gripp. Anything created after the discharge, they could
24 not have relied on this in making a decision to
25 discharge.

1 JUDGE STECKLER: Okay. Just to be clear, that's
2 what you subpoenaed. Okay. Ms. LaRose, you're checking
3 the personnel file?

4 MS. LAROSE: And it's not in there, Your Honor.

5 JUDGE STECKLER: Okay. So, Mr. Needham, you
6 didn't store this in Mr. VanOpDorp's personal file? Let
7 me ask you a question. Did you create this in response
8 strictly for the ULP?

9 THE WITNESS: I believe that was the reasoning,
10 yes.

11 JUDGE STECKLER: Okay. Mr. Niew, take a deep
12 breath because I'm not asking whether he created it on
13 the request of counsel. Okay. Mr. Niew, you may -- so
14 any additional objections?

15 MR. WILLIAMS: Other than the General Counsel's
16 objections and the Union's objections?

17 JUDGE STECKLER: Yes. Any --

18 MR. WILLIAMS: No, other than it is self-serving
19 and created after.

20 JUDGE STECKLER: Okay. And this is Respondent's
21 14, I'm going to admit it, but we give it the weight
22 that it deserves.

23 **(Respondent's Exhibit No. 14 received into evidence.)**

24 Mr. Niew, you may continue.

25 MR. NIEW: Yes.

1 Q BY MR. NIEW: Nick, you're going to be seeing
2 Respondent's Exhibit 15 in a moment. It's a two-page
3 document. Have you had a chance to look at the second
4 page yet?

5 A Yes, sir.

6 Q Now with respect to R-15, when did you prepare
7 this?

8 A I believe that would have been the summer of 2019
9 as well.

10 Q And why did you prepare Respondent's Exhibit 15?

11 A Just more detailed issues. Some of them are the
12 same as Exhibit 14, just documenting all of the
13 complaints and issues that we've had with Adam over the
14 years.

15 **(Respondent's Exhibit No. 15 marked for identification.)**

16 MR. NIEW: I offer R-15.

17 MR. WILLIAMS: Your Honor, the same objection to
18 R-15 as R-14.

19 JUDGE STECKLER: Ms. LaRose?

20 MS. LAROSE: Same objection.

21 JUDGE STECKLER: Mr. Needham, was this document
22 created before or after Mr. VanOpDorp was terminated?

23 THE WITNESS: I believe it was after he was
24 terminated.

25 JUDGE STECKLER: Do you know how long after his

1 termination?

2 THE WITNESS: Probably within the week.

3 JUDGE STECKLER: What prompted you to make this
4 summary?

5 THE WITNESS: Like I said, documentation of why
6 Adam was terminated.

7 JUDGE STECKLER: Was it in response to the ULP
8 filed?

9 THE WITNESS: It could have been.

10 JUDGE STECKLER: And where did you keep that
11 document?

12 THE WITNESS: It was saved on our company server.

13 JUDGE STECKLER: So you didn't rely upon this
14 document as part of the termination, correct?

15 THE WITNESS: Yeah, items in this complaint were
16 baselines for the termination, but the document -- go
17 ahead.

18 JUDGE STECKLER: And you have quite a variety of
19 different issues here that you've had with Mr.
20 VanOpDorp, correct?

21 THE WITNESS: Yes, ma'am.

22 JUDGE STECKLER: Okay. On the same basis as
23 Respondent's Exhibit 14, we'll admit Respondent's 15 and
24 give it the weight it deserves.

25 **(Respondent's Exhibit No. 15 received into evidence.)**

1 Q BY MR. NIEW: I'm going to be showing you an April
2 19th email that you sent to Adam in a moment. It's RX-5.

3 JUDGE STECKLER: Mr. Niew, it would be helpful if
4 you would show them the document first and then ask them
5 what it is rather than telling him what it is, please.

6 MR. NIEW: Certainly.

7 Q BY MR. NIEW: Can you explain what Exhibit R-5 is?

8 A Yes. That is an email that I sent to Adam in
9 regard to complaints that I had heard and other people
10 in management had heard about his conducting union
11 business on union time.

12 JUDGE STECKLER: You mean on company time, don't
13 you?

14 THE WITNESS: Company time, yes. Sorry.

15 Q BY MR. NIEW: Do you remember who complained and
16 when?

17 A I know I got a direct complaint from Ian Macumber,
18 and I know that Curt McKinley and Dan Needham had also
19 heard complaints that they communicated back to myself
20 as well.

21 Q And can you tell us what the second page of R-5 is?

22 A That's Adam's response to my email earlier in the
23 day.

24 **(Respondent's Exhibit No. 5 marked for identification.)**

25 Q Did you talk to Adam about his email?

1 A No, I did not.

2 Q And did anybody else talk to Adam about the email
3 if you know?

4 A Not -- I don't have any -- I do not know that
5 answer.

6 JUDGE STECKLER: Has R-5 already been admitted? I
7 know we've seen it before.

8 COURT REPORTER: No, I don't think so, Judge.

9 JUDGE STECKLER: Okay. Thank you, Mr. Molinaro.

10 MR. NIEW: I thought it was admitted by General
11 Counsel, but I will offer R-5.

12 MR. WILLIAMS: Just for clarification purposes,
13 that is -- what they are trying to put into evidence is
14 General Counsel's Exhibit 8(a) and 8(b).

15 JUDGE STECKLER: Mr. Needham, what's that blank
16 spot at the top?

17 THE WITNESS: Nothing that I'm aware of.

18 JUDGE STECKLER: It's a pretty big blank spot.
19 Mr. Wright, you're raising your hand.

20 MR. WRIGHT: Yes, Judge. And I've explained this
21 to opposing counsel. When I was trying to meet the 12
22 p.m. upload deadline, it was an email of Nick
23 essentially forwarding the below correspondence to the
24 company's attorneys, Dan Niew. Rather than trying to
25 get a new copy, I just blacked it out. It should have

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 been cleaner, but that's what that is.

2 JUDGE STECKLER: Okay. Since we've already GC-
3 8(a) and 8(b) in the record and it's duplicative, we
4 don't have to put in Respondent's 5 then.

5 Q BY MR. NIEW: The photos in RX-2, which will be up
6 shortly -- have you had a chance to look at the photos
7 in R-2?

8 A Yes.

9 Q Were you at the job site on or about when these
10 photos were taken?

11 A No, I was not. Not those days.

12 Q Were you there anywhere near those days?

13 A I believe I was there on the following day.

14 JUDGE STECKLER: What date was that, Mr. Needham?

15 THE WITNESS: It probably would have been July 9th.

16 Q BY MR. NIEW: Do the photos accurately depict
17 what's in the photos?

18 A Yes.

19 JUDGE STECKLER: Mr. Niew, I think you meant do
20 the photos accurate depict what was going on at the job
21 site.

22 MR. NIEW: Yes, Your Honor. Thank you.

23 Q BY MR. NIEW: The box that people could go into,
24 do you know if it was ever elevated 18 inches above the
25 two sides?

1 MS. LAROSE: Objection.

2 JUDGE STECKLER: What's the objection, Ms. LaRose?

3 MS. LAROSE: He was not there when these photos
4 were taken. This is not the witness for it, Your Honor.
5 The foundation isn't there. It wasn't his job and so
6 on.

7 JUDGE STECKLER: Sustained.

8 MR. NIEW: I'll move on to the next exhibit. We
9 offer all of Exhibit R-2.

10 JUDGE STECKLER: Including D-2? Just kidding.
11 Bad joke. Objections?

12 MS. LAROSE: Your Honor, if you opposing counsel
13 doesn't mind, can we scroll through (g), (h), (i), (j).
14 I just do not recall if we had testimony on these.

15 MR. WILLIAMS: Were you going to object, Liz?

16 MS. LAROSE: Go ahead, Mr. Williams.

17 MR. WILLIAMS: So, Your Honor, at least with
18 respect to these photos, at least to 2(a), 2(b), (c),
19 this witness can't -- didn't take the pictures. He
20 wasn't there on the day that these pictures were taken,
21 so he cannot -- so Respondent can't properly lay a
22 foundation because he can't testify that this is a fair
23 and accurate representation of the job site as it was as
24 of the date that these photos were taken.

25 JUDGE STECKLER: But haven't we had testimony to

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 that effect?

2 MR. WRIGHT: Judge, if I may. What General
3 Counsel is talking about there, we had Dan Needham talk
4 all about that, and I have yet to be able to upload the
5 newly bate stamped exhibits to SharePoint at that stage.
6 And as to R-2(h), (i) and (j), Nick Needham testified
7 about that on Thursday of last week because we had R
8 Exhibit 3 admitted, and (i) and (j) Nick testified that
9 those were the same photos from Exhibit 3, just better
10 quality. So again, there's been testimony as to all of
11 Exhibit 2. We just didn't have it updated with the bate
12 stamps.

13 JUDGE STECKLER: Does that explain, Mr. Williams?

14 MR. WILLIAMS: Yeah. I sort of agree with
15 Respondent. I'm not sure if I remember. It's hard to
16 see the first three pictures of the job site. I don't
17 remember necessarily Dan Needham saying he took the
18 photos.

19 JUDGE STECKLER: I believe he did.

20 MR. WILLIAMS: Okay.

21 JUDGE STECKLER: Ms. LaRose, objections on 2?

22 MS. LAROSE: The same objections as Mr. Williams.
23 So, Your Honor, if you're inclined to overrule then, it
24 would be the same.

25 JUDGE STECKLER: Okay. Respondent's 2 is

1 received.

2 **(Respondent's Exhibit No. 2 received into evidence.)**

3 Q BY MR. NIEW: Do you remember the testimony you
4 gave regarding weekly reports from the city?

5 A Yes. What projects?

6 Q Well --

7 A I guess 11th or 18th Street?

8 Q The City of Moline.

9 A Okay. I'm going to show you RX-6.

10 JUDGE STECKLER: How many pages are in this
11 document?

12 MS. SPIELBERG: It's 121.

13 JUDGE STECKLER: Is that correct?

14 MR. NIEW: Yes, Your Honor.

15 JUDGE STECKLER: Okay. And you just got into 7?
16 Is this supposed to be 6 or 7?

17 MR. NIEW: This is RX-6.

18 JUDGE STECKLER: Okay.

19 MR. WRIGHT: Your Honor, I believe the 121 pages
20 you're seeing reflects Exhibits 1 through 15, and that's
21 -- not 121 pages for Exhibit 7.

22 JUDGE STECKLER: Okay. Thank you.

23 MS. LAROSE: We weren't on Exhibit 6 at the time.
24 We were on 7. Whatever page was showing at (inaudible)
25 when the Judge asked (inaudible) exhibit.

1 MR. NIEW: I'm sorry. It is --

2 Q BY MR. NIEW: What is Exhibit R-7?

3 JUDGE STECKLER: Well, wait a minute. Let's deal
4 with R-6 first since that was the first one proposed.

5 Q BY MR. NIEW: What is --

6 JUDGE STECKLER: Just a second, Mr. Niew.
7 What timeframe does this cover? Mr. Needham, do
8 you know?

9 THE WITNESS: Oh, yeah. That covers the entire
10 18th Street project, Exhibit 6 does.

11 JUDGE STECKLER: Now the question. Was Mr.
12 Dunleavey on the job at the time?

13 THE WITNESS: Yes, he was.

14 JUDGE STECKLER: Under what circumstances did Mr.
15 Dunleavey leave?

16 THE WITNESS: Under what circumstances?

17 JUDGE STECKLER: Yes.

18 THE WITNESS: He put his two-week notice in in
19 December of '18, and he went into business with an old
20 high school friend doing I guess another excavating
21 business. They went into business together.

22 JUDGE STECKLER: So what was Mr. Dunleavey's role
23 in the 18th Street project?

24 THE WITNESS: Jeff Dunleavey was -- in Curt's
25 current situation. These weekly reports were emailed to

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 myself and him every week by Darrell Preston from the
2 City of Moline.

3 JUDGE STECKLER: Okay.

4 THE WITNESS: And it's basically this project, Joe
5 Puck was the city inspector, and if you go through the
6 weekly descriptions on a daily basis, over on the right-
7 hand side he talks about what was done that day, and how
8 many feet of pipe were installed. If there were issues
9 on the project, he would make notes of that as well.

10 JUDGE STECKLER: Okay. So the inspector would
11 make notes of all kinds of issues on the project?

12 THE WITNESS: Not all the issues. Just -- so for
13 example on this one, I think it's October 3rd. I think
14 that was a Tuesday or a Wednesday. That's the day they
15 figured out they got to the first manhole, yeah, up to
16 that first manhole and that the grade was wrong.

17 JUDGE STECKLER: What was the date on that again?

18 THE WITNESS: I believe it's October 3rd. Yeah, a
19 Wednesday.

20 JUDGE STECKLER: Thank you.

21 THE WITNESS: So one is the October 3rd. The crew
22 installed 220 foot of 12-inch storm drain, the city
23 completed the televising of the sanitary sewer, much
24 talk today of the .17 percent versus .4 percent issue.

25 JUDGE STECKLER: What does that mean?

1 THE WITNESS: It means the pipe was ran too flat
2 for the city to accept. Because on an 8-inch sanitary
3 sewer, the minimum grade you need for an 8-inch
4 (inaudible) pipe is .4 percent.

5 JUDGE STECKLER: Okay. And then does is that
6 discussion continuing to October 4?

7 THE WITNESS: No. That's where the issue was
8 first brought up. And then I think if you go down to
9 Sunday the 21st it -- you can see in there where it says
10 re-laid 20-foot of sanitary sewer continuing north.

11 JUDGE STECKLER: Okay.

12 THE WITNESS: That's when we started replacing the
13 sanitary sewer that Adam had installed incorrectly in
14 September.

15 JUDGE STECKLER: Okay. How often would you
16 receive these reports?

17 THE WITNESS: Weekly.

18 JUDGE STECKLER: So you received weekly as part of
19 the contractor, and as I recall you said the inspector
20 doesn't get down in the hole and measure these things?

21 THE WITNESS: No, they do not.

22 JUDGE STECKLER: Okay. Are we still -- Mr. Niew,
23 did you have additional questions on GC-6 or excuse me,
24 Respondent's 6?

25 Q BY MR. NIEW: R-6, is that kept in the ordinary

1 course of business?

2 A Yes. For the City of Moline projects they are.

3 Q And you are the keeper of the records?

4 A Yes.

5 Q And is that -- is R-6 a record of Needham
6 Excavating?

7 A Yes.

8 **(Respondent's Exhibit No. 6 marked for identification.)**

9 MR. NIEW: I offer R-6.

10 MR. WILLIAMS: No objection.

11 MS. LAROSE: Your Honor, I think the questions are
12 not tailored to the introduction of the documents. He
13 asked if they were kept in the ordinary course of
14 business, and the witness said in the City of Moline's
15 business, yes. And Mr. Niew asked him if he was the
16 keeper of those records, and Mr. Needham said yes.

17 JUDGE STECKLER: Well, you received them weekly.
18 Is that what you said, Mr. Needham?

19 THE WITNESS: Yes.

20 JUDGE STECKLER: And does Needham keep the City of
21 Moline records on each project?

22 THE WITNESS: After they are sent to us, yes.

23 JUDGE STECKLER: And you said they were sent
24 weekly. They're not sent at the end of the project?

25 THE WITNESS: No. They are sent weekly via email.

1 JUDGE STECKLER: And in what files do you keep
2 these documents?

3 THE WITNESS: Underneath that project file on our
4 server, and then we've got a separate folder for weekly
5 reports that they all get stored into.

6 JUDGE STECKLER: How long do you keep these
7 reports?

8 THE WITNESS: We've never deleted a project off
9 the server.

10 JUDGE STECKLER: So it's time to get more memory
11 in the server?

12 THE WITNESS: Pretty much, yes.

13 JUDGE STECKLER: Okay. Ms. LaRose, does that sway
14 some of your concerns?

15 MS. LAROSE: Yes. Thank you, Your Honor.

16 JUDGE STECKLER: Respondent's 6 is admitted.

17 **(Respondent's Exhibit No. 6 received into evidence.)**

18 Q BY MR. NIEW: You have before you Exhibit R-7.
19 Can you explain what that is?

20 A That is a spreadsheet that I put together for the
21 lost days and replacement of the sanitary sewer that was
22 installed wrong by Adam VanOpDorp.

23 **(Respondent's Exhibit No. 7 marked for identification.)**

24 Q Did you personally prepare that?

25 A Yes, I did.

1 Q And what documents did you look at in order to
2 prepare it?

3 A I looked at the weekly reports that the City of
4 Moline had issued to us. I correlated those days back
5 to the hours that were turned in under that job off of
6 the payroll records. And I also went through rock
7 tickets and material tickets from Riverstone Group to
8 see how much 1-inch clean and FA-6 we had to buy to
9 reinstall that material or that pipe.

10 MR. NIEW: I offer RX-7.

11 MR. WILLIAMS: No objection.

12 JUDGE STECKLER: Ms. LaRose?

13 MS. LAROSE: One minute, please, Your Honor. No
14 objection.

15 JUDGE STECKLER: Who is buzzing?

16 MR. NIEW: My phone is buzzing somebody. Sorry.

17 JUDGE STECKLER: That's okay. Just tell them I
18 ordered them off the phone.

19 While you're looking, Ms. LaRose, I do have a
20 question for Mr. Needham.

21 When did you create this document?

22 THE WITNESS: When?

23 JUDGE STECKLER: Yes, sir.

24 THE WITNESS: It would have been early 2019.

25 JUDGE STECKLER: So this doesn't reflect the dates

1 in which it was on the 18th Street job, where the work
2 was done, does it?

3 THE WITNESS: Say that again.

4 JUDGE STECKLER: This one page does not reflect
5 the dates on the 18th Street project where corrective
6 work was allegedly done, correct?

7 THE WITNESS: I'm not quite understanding what
8 you're asking.

9 JUDGE STECKLER: Okay. This document only shows
10 totals rather than dates on which the work was
11 performed, correct?

12 THE WITNESS: That's correct. Those are the total
13 hours for the 12 days that it took us to re-lay the
14 pipe.

15 JUDGE STECKLER: Okay. When you say -- on this
16 document where it says number of units, what does that
17 mean?

18 THE WITNESS: The number of units is hours,
19 accepted the 1-inch clean rock and the FA-6 backfill
20 materials, so that would be tons.

21 JUDGE STECKLER: Okay. And you've got separate
22 charges for labor, and then the machines. Is that your
23 normal bookkeeping practice?

24 THE WITNESS: Yes. So when we bill out a machine,
25 say the Komatsu 490 at \$300.00 an hour, that includes

1 the operator. The labor is the two laborers that are
2 working on the ground and not operating equipment.

3 JUDGE STECKLER: Okay. Just for my own
4 clarification so I can understand what's going on.

5 Ms. LaRose, any objections?

6 MS. LAROSE: No, Your Honor.

7 JUDGE STECKLER: Respondent's Exhibit 7 is
8 admitted.

9 **(Respondent's Exhibit No. 7 received into evidence.)**

10 Q BY MR. NIEW: You should have in front of you
11 Exhibit R-8. Can you explain what that document is?

12 A Yes. That is the cost for us to -- that was lost
13 to having to break out the street and replace the 20-
14 foot section of pipe that was installed incorrectly in
15 the summer of 2018 by Adam VanOpDorp.

16 **(Respondent's Exhibit No. 8 marked for identification.)**

17 Q And what were the source documents you looked at in
18 order to prepare Exhibit R-8?

19 A I looked at the weekly report for 11th Street and
20 then correlated that back through payroll records and
21 material tickets for that day.

22 Q What is FA6 backfill materials?

23 A It's -- they call it like a manmade sand. It's
24 kind of like a cleaner, lime screenings.

25 Q And right below it says concrete replacement,

1 square yards.

2 A Yep.

3 Q What is a square yard mean?

4 A The square yards of the pavement that had to be
5 replaced by the concrete contractor that was installed
6 during phase I. That was permanent pavement.

7 MR. NIEW: I offer Respondent's Exhibit 8.

8 MR. WILLIAMS: Objection.

9 JUDGE STECKLER: Mr. Needham, I am again going to
10 ask when did you create this document?

11 THE WITNESS: That one would have been probably
12 the 3rd or 4th week of July once I made sure I had all
13 the invoices from Riverstone to make sure that I had all
14 the rock tickets, that they got delivered to the office.

15 JUDGE STECKLER: So you didn't -- you weren't sure
16 how much this was going to cost Needham when you fired
17 Mr. VanOpDorp. Is that correct?

18 THE WITNESS: I had everything figured up with an
19 estimate on the material. I knew how much time
20 replacement was going to be. I knew the total hours
21 that was there that day. There was a preliminary figure
22 that was figured on July 8th for what we were going to
23 lose on that, and like I said, I had a week to finalize
24 it until I got an invoice from Riverstone on the rock
25 and FA6 backfill.

1 JUDGE STECKLER: So you knew exactly how many
2 hours it was going to take at that time?

3 THE WITNESS: Yes. I talked to my brother late
4 morning closer to noon on July 8th, and he told me that
5 they would have it -- have that 20-foot piece of pipe
6 back to the correct grade that day at the end of the
7 day.

8 JUDGE STECKLER: Okay. Mr. Williams, did you say
9 no objection or objections?

10 MR. WILLIAMS: Objection. He did not rely on this
11 document prior to the discharge of Adam VanOpDorp as a
12 basis for the discharge.

13 JUDGE STECKLER: Ms. LaRose?

14 MS. LAROSE: Same objection, Your Honor.

15 JUDGE STECKLER: We'll admit Respondent's 8 to
16 show what Respondent calculated after the termination.

17 **(Respondent's Exhibit No. 8 received into evidence.)**

18 Q BY MR. NIEW: I'd like you to talk through what
19 you remember happened on July 1st, '19 with respect to
20 the timecards.

21 A July 1st?

22 Q Yes.

23 A Well, I was in my office on July 1st, and I heard --
24 Curt's office is down the hall from my office. I heard
25 Chad come in and him and Curt were talking. So I walked

1 down to see what was going on for the day as I'm kind of
2 stuck in the office and don't get to see the field guys
3 on certain occasions very often, so I walked down there,
4 and it was about 4 o'clock. Chad had told Curt that
5 Adam had left, that him and Adam both had left around
6 3:30 that day.

7 Q Did you actually hear that?

8 A Yes.

9 Q Who else was present?

10 A It was me, Curt McKinley, Chad Havill, and I
11 believe Joe Needham was in there as well.

12 Q Do you remember anything else from that day with
13 respect to the timecards?

14 A Not from July 1st, no.

15 Q Okay. The day of termination of Adam, which I
16 believe was July 8th, can you walk me through what took
17 place that day?

18 A I had received a call from Erin Branner from the
19 City of Moline that when they got excavated down to the
20 sanitary sewer pipe, it was discovered that it was
21 installed with backfill from the year prior to and that
22 she was going to require us to break up new street and
23 fix that length of pipe before we could continue our way
24 to the south. Then I talked to Dan. After I got off
25 the with Erin, I talked to Dan and he told me that he

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 had River City Cutting on the way to start cutting the
2 concrete and that they were going to get switched over
3 to it and would call me later once he had a better idea
4 of how much time they were going to lose getting that
5 fixed.

6 And then also the morning of the 8th, I had asked
7 Curt if he had everybody's timecard because Dan Dolan
8 had called and were wanting a bill up to date of where
9 they were at. But Curt informed me that he did not have
10 Curt's timecard -- or not Curt. Curt informed me that
11 he did not have Adam's timecard, but he was going to
12 stop by the job site and pick it up.

13 JUDGE STECKLER: About what time was that? Mr.
14 Needham, about what time was that?

15 THE WITNESS: My conversation with Curt?

16 JUDGE STECKLER: Speaking with Dan Dolan.

17 THE WITNESS: Kevin Dolan called me that morning.

18 JUDGE STECKLER: Oh, excuse me. What time?

19 THE WITNESS: Kevin Dolan called me probably like
20 7:00 or 7:30 that morning.

21 JUDGE STECKLER: And what time did you contact
22 Curt regarding the timecards?

23 THE WITNESS: It would have been soon after that.
24 I don't know if it was the very next call or if I had
25 another call in there, but somewhere between 7:30 and 8

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 o'clock.

2 JUDGE STECKLER: Okay. Did you call or text?

3 THE WITNESS: Curt?

4 JUDGE STECKLER: Yes.

5 THE WITNESS: I would have called Curt.

6 JUDGE STECKLER: Okay. And what if anything did

7 Curt say about going to pick up the timecard?

8 THE WITNESS: He had told me that he did not have
9 Adam's timecard and that he would swing by Dolans and
10 grab it from Adam and bring it back to the office.

11 JUDGE STECKLER: What, if anything, did he say
12 about his suspicions about the timecard?

13 THE WITNESS: At that moment, nothing.

14 JUDGE STECKLER: Okay. And then at what time did
15 Mr. Curt come back with the timecard?

16 THE WITNESS: I don't -- I'm going to presume
17 around 10 o'clock.

18 JUDGE STECKLER: Okay. What if you weren't
19 assuming? Do you have a better idea?

20 THE WITNESS: It was sometime in the morning. I
21 know it was before lunch.

22 JUDGE STECKLER: And when did you get the call
23 from the City of Moline inspector?

24 THE WITNESS: That would have been around 8
25 o'clock as well.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Okay. And then when did you talk
2 to your brother, and I assume that brother you said was
3 Dan.

4 THE WITNESS: Yes. I talked with Dan right after
5 I got off the phone with Erin Branner from the city.

6 JUDGE STECKLER: And how long was your
7 conversation with Ms. Branner?

8 THE WITNESS: Maybe five minutes.

9 JUDGE STECKLER: Okay. And then you called Dan
10 and discussed with him, correct?

11 THE WITNESS: Yes.

12 JUDGE STECKLER: And then how long was that
13 conversation?

14 THE WITNESS: Probably about five minutes as well.

15 JUDGE STECKLER: Mr. Niew, you may continue.

16 Q BY MR. NIEW: What happened next with respect to
17 terminating Adam?

18 A Curt got back to the office and then he came down
19 to my office and was like, hey, Adam put down 10 hours
20 on his timecard last Monday, and Chad was in here last
21 week if you remember and said that they left the job at
22 3:30, so there's no way that he had 10 hours worth of
23 work that day. So we kind of like let me think about
24 it. Let's see what we're going to do. And then when I
25 talked to my brother on 11th Street the second time, and

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 he said that they were going to get done, and we kind of
2 started figuring some numbers of how much that was going
3 to cost, and we figured that it was going to be
4 somewhere between \$25 and \$30 grand to get that
5 repaired.

6 Then I talked to Curt about it, and I'm like I
7 think it's time for Adam to leave. I go -- then we kind
8 of had a short discussion about it, and we were both
9 kind of in agreement, so I would have called Joe and had
10 a conversation with him and told him everything that had
11 come up that day with Adam. He's like give me a little
12 bit of time and let me think about it. And he asked if
13 I had talked to Dan, and I'm like no, I haven't yet. So
14 I call him and see what his opinion is. So between the
15 four of us, we came to the conclusion after lunch that
16 that day was going to be Adam's last day at Needham
17 Excavating.

18 So then I went -- once that decision was made, I
19 sent Adam a text asking him to be at the shop at 3:30.
20 Then I went to Casie and had her get Adam a check for
21 eight hours of work that day. And when he got to the
22 office Curt McKinley was in there in my office with me
23 when Adam got there. The afternoon prior to that
24 meeting, Dan had texted Curt some of the pictures from
25 11th Street that he had taken, and I had those printed

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 off and I had a copy of the timecards, and Adam walked
2 into my office and I showed him the pictures of 11th
3 Street and explained to him that they had installed a
4 pipe wrong the previous year, and he just kind of said -
5 - in typical Adam fashion he just kind of shrugged his
6 shoulders and well, I'm sorry. And then I'm like then
7 to top it off, here you are cheating and lying on your
8 timecards. And he goes -- he said I must not have
9 checked my book or something. I'm sorry.

10 And then after that was done, I explained to him
11 that we were going to take his truck to the shop and get
12 all of our tools, the toolbox, our fuel tank and any
13 Needham Excavating tools out of it.

14 Q During this termination meeting, who spoke other
15 than you and Adam?

16 A During the termination meeting in my office, it was
17 just me.

18 Q Well, Adam spoke, too, right?

19 A Well, yeah. Adam and myself, yes.

20 Q Just to clarify. You said Casie. That's Casie
21 Morehead from your office?

22 A Yes.

23 Q What happened after the meeting ended?

24 A Adam walked out of the office. Curt went back to
25 the shop. And then Adam backed into the far east bay of

1 our weld shop that's there, and then they started taking
2 stuff out. Then I came out there and Bill Bouchard was
3 helping. It probably took 30 minutes to get everything
4 out of his truck. While we were doing that, Adam was
5 not very happy and made the comment multiple times of if
6 you want to go down this road, you need to check
7 everybody else's timecards because I'm not the only
8 cheating on them.

9 Q Did he explain who he meant by checking someone
10 else's timecards?

11 A No. No, he didn't make reference to anybody.

12 Q After the truck was cleaned out, did you have
13 another conversation with Adam about his termination?

14 A No, I did not.

15 Q Do you know if anybody did?

16 A No. Not that I was made aware of.

17 Q Going on to a new subject. Can you put up RX-3,
18 please? Oh, I'm sorry. RX-3 has been admitted. Let's
19 go to -- can you bring up RX-4, please?

20 *[Long pause]*

21 MR. WRIGHT: Judge, similar to Exhibit 2, at least
22 some of Exhibit 4, there has been testimony about from
23 other witnesses. Again, that was before I was able to get
24 the Bates stamped aspect of it with the (a), (b), (c),
25 etc., uploaded to SharePoint. So I don't believe that any

1 of Exhibit 4 has been admitted, as of this time.

2 Q BY MR. NIEW: Now, I would like you to go to Page
3 R-4(d), please.

4 Can you explain how that photo got sent, and to whom?

5 A That is a screenshot from my cellphone. That was a
6 group text message with Boo, which is Dan Needham, and
7 Curt McKinley, Adam VanOpDorp, and then Dad, which is Joe
8 Needham.

9 MR. NIEW: At this time, I offer all of Exhibit 4.

10 JUDGE STECKLER: What year was that 4(d) taken, Mr.
11 Needham?

12 THE WITNESS: 2019.

13 JUDGE STECKLER: So that is June 28, 2019; is that
14 correct?

15 THE WITNESS: Yes.

16 JUDGE STECKLER: Can you scroll through the rest of
17 4, so that we can all check and see?

18 *[Long pause]*

19 MS. LaROSE: One -- hold on a second, Your Honor.

20 JUDGE STECKLER: Okay.

21 MS. LaROSE: Oh, okay, so 4(a) is three pages; is
22 that right, Mr. Wright?

23 MR. NIEW: Yes.

24 MS. LaROSE: Okay, I'm sorry.

25 JUDGE STECKLER: Okay, let's see 4(b).

1 This is dated Monday, May 13th, Mr. Needham; is that
2 correct?

3 THE WITNESS: Yes.

4 JUDGE STECKLER: This is about the ADA panels; is
5 that correct?

6 THE WITNESS: Correct.

7 JUDGE STECKLER: At Cubby Park?

8 MS. LaROSE: If I am understanding correctly, Your
9 Honor, this is supposed to be the Nick's screenshot?

10 THE WITNESS: That is Dan's screenshot.

11 JUDGE STECKLER: But you received these texts?

12 THE WITNESS: Yes, I was part of that group text
13 message, yes.

14 JUDGE STECKLER: Okay, but it says only at the top,
15 two people; is that correct?

16 THE WITNESS: No, there is three people.

17 JUDGE STECKLER: Okay, so who is the three people?

18 THE WITNESS: That is Curt McKinley, Nick Needham,
19 and Dan Needham, and Dan Needham's response is in the
20 blue.

21 JUDGE STECKLER: Okay, and that is Monday, May 13th,
22 2019; is that correct?

23 THE WITNESS: Yes.

24 JUDGE STECKLER: Okay. Did you take these
25 screenshots, though?

1 THE WITNESS: I believe that would have been off
2 Dan's phone.

3 JUDGE STECKLER: Okay, let's -- is everybody ready to
4 move on to the 4(c)?

5 MS. LaROSE: Yes, Your Honor.

6 JUDGE STECKLER: Okay, and we discussed that one, is
7 that correct?

8 Is that your phone, Mr. Needham?

9 THE WITNESS: Yes, that was your phone?

10 JUDGE STECKLER: Did you take the screenshots here?

11 THE WITNESS: No, that appears to be Dan's phone.

12 I am part of that text message up on the top with the
13 picture right there.

14 MR. WILLIAMS: Is that October 9th, 2017?

15 THE WITNESS: Yes.

16 MR. WILLIAMS: Okay.

17 JUDGE STECKLER: Okay, is that it for 4(c)?

18 MR. NIEW: Yes, Your Honor.

19 JUDGE STECKLER: Okay, so the next document is the
20 same as the one we previous seen, is that correct, 4(d)?

21 Yes, that was the one that we previously discussed?

22 MR. NIEW: Yes, Your Honor.

23 JUDGE STECKLER: Okay, now 4(e). There is a part
24 that is redacted.

25 Can you tell me what that is about, Mr. Needham?

1 THE WITNESS: What's redacted?

2 JUDGE STECKLER: Yes.

3 THE WITNESS: That was part of another project that
4 did not have any bearing on this text message string.

5 JUDGE STECKLER: Okay. Is -- is this your phone or
6 is this somebody else's phone that we see in 4(e)?

7 THE WITNESS: That's -- I am going to assume that is
8 Dan Needham's, but I -- I am on that.

9 JUDGE STECKLER: Okay.

10 THE WITNESS: And that is a text message between
11 Curt, and the CM would -- with Casie Morehead taking over
12 Jeff Dunleavy's phone after he left, that would have been
13 Jeff Dunleavy at the time, Joe Needham, myself, and Dan
14 Needham.

15 JUDGE STECKLER: So the screenshot came much later
16 than the actual events; is that correct?

17 THE WITNESS: Correct.

18 JUDGE STECKLER: Is 4(e) one page, too?

19 THE WITNESS: Yes.

20 JUDGE STECKLER: This is 4(f)?

21 MR. WRIGHT: Yes.

22 JUDGE STECKLER: Did you testify to this today, Mr.
23 Needham?

24 MR. NIEW: I believe Dan Needham testified to that
25 this morning.

1 JUDGE STECKLER: Okay, we will move along then.

2 MR. WRIGHT: That is it for 4.

3 JUDGE STECKLER: Objections?

4 MR. WILLIAMS: I'm -- I mean, technically, from a
5 foundation standpoint, since it was Dan Needham's phone
6 that made the screenshots, that are connected with these
7 text messages, probably he is the most -- he is the one
8 that should be to get in, but in order to save time,
9 because -- all they need to do is call Dan Needham.

10 So, in order to save time, I don't have an objection,
11 but with the understanding that this -- that this is not
12 the right witness to get this piece of evidence in,
13 notwithstanding --

14 MS. LaROSE: Your Honor, the Union takes the same
15 position.

16 JUDGE STECKLER: Okay, since we will be coming back
17 at some point, let's call it provisionally admitted, but I
18 assume Mr. Needham will testify again, so we will hold on
19 definite admission.

20 THE COURT REPORTER: So, Judge, I am confused.
21 Do I put this in or do I leave it out?

22 JUDGE STECKLER: Let's leave it out for now.

23 THE COURT REPORTER: Thank you.

24 JUDGE STECKLER: Okay, other questions, Mr. Niew?

25 MR. NIEW: Yes.

1 Can we pull up R-9, please?

2 **(Respondent's Exhibit 9, marked for identification.)**

3 Q BY MR. NIEW: Nick, did you prepare this document?

4 A Yes.

5 Q And what is the purpose of you preparing this
6 document?

7 A It was to show where all NEI employees were working
8 in relation to the claims by Brett Gripp that we had a
9 pickup parked outside of his house.

10 Q And what source documents did you use to prepare
11 this?

12 A This is all out of our -- it is all based on the
13 payroll records of Sage 100.

14 Q What is Sage 100 again?

15 A Our accounting software.

16 Q When did you prepare this document?

17 A I honestly don't remember at the moment, date-wise.

18 JUDGE STECKLER: It was after March 2020, is that
19 correct?

20 THE WITNESS: Correct.

21 JUDGE STECKLER: Did you submit this in response to
22 the ULP investigation?

23 THE WITNESS: I would assume, but I honestly don't
24 know.

25 JUDGE STECKLER: Mr. Niew, you may continue.

1 MR. NIEW: I offer RX-9.

2 JUDGE STECKLER: Objections?

3 MR. WILLIAMS: Yes, General Counsel objects to the
4 form. This document was created after the event, and it
5 seems to be in defense of the ULP, and I don't think that
6 it is even a business record. This seems to be more in
7 preparation of the defense of the ULP, which was created
8 after the fact, after March 20 -- March 20 of 2020.

9 JUDGE STECKLER: Any voir dire before I discuss with
10 Mr. Needham?

11 *[No response]*

12 JUDGE STECKLER: Okay, I -- Ms. LaRose, you are
13 raising your hand?

14 MS. LaROSE: Your Honor, are you still entertaining
15 objections on this document, or were you --

16 JUDGE STECKLER: Yes. Yes, I was, because I was
17 going to ask some questions.

18 MS. LaROSE: Well, I -- I can wait, Your Honor, until
19 you are finished with your questions.

20 JUDGE STECKLER: Okay. Mr. Needham, this -- this
21 shows where people were working on those days; am I
22 understanding that correctly?

23 THE WITNESS: That is correct.

24 JUDGE STECKLER: And it shows the work date, which is
25 the dates at issue.

1 How many pages is this document?

2 THE WITNESS: Two or three, I believe.

3 MR. NIEW: I believe it is four, Your Honor.

4 MR. WRIGHT: Four.

5 JUDGE STECKLER: There we go. Okay.

6 So, it shows where people were working, but it
7 doesn't show where their vehicle was parked in the evening
8 or in the morning, is that correct?

9 THE WITNESS: Of?

10 JUDGE STECKLER: On those specific dates, for whoever
11 was assigned to that vehicle.

12 THE WITNESS: Correct.

13 JUDGE STECKLER: And it doesn't show the times where
14 somebody started to use the vehicle or when they stopped,
15 correct?

16 THE WITNESS: Correct.

17 JUDGE STECKLER: Any additional information, Mr.
18 Niew, we can glean from this document, that you are going
19 to ask Mr. Needham about?

20 MR. NIEW: Yes.

21 Q BY MR. NIEW: Looking at the far right-hand column
22 where it is hours, can you explain what that is?

23 A That would be the total hours a day that each
24 employee had worked on those days. There could be -- say,
25 for example, Aaron Hamilton has three different lines for

1 March 5th. He has got one at five hours, one at three
2 hours, and one at one and a half hours. That could very
3 well be, I am going to assume that he ran two different
4 pieces of equipment, and then hour and a half is the
5 overtime line, because that all gets separated out,
6 separate with our accounting software.

7 Q So your testimony, if I am correct, is for Aaron
8 Hamilton, he actually worked five hours that day?

9 A No, nine and a half.

10 Q Oh, okay.

11 JUDGE STECKLER: Mr. Needham, do you have GPS
12 trackers on your vehicles?

13 THE WITNESS: No, we do not.

14 JUDGE STECKLER: I am inclined to take Respondent's -
15 - well, I am inclined -- I am going to take Respondent's
16 Exhibit 9 and give it the weight it deserves?

17 **(Respondent's Exhibit 9, received into evidence.)**

18 JUDGE STECKLER: We can have some more argument on
19 the brief.

20 MR. NIEW: Can we pull up R-10, please?

21 **(Respondent's Exhibit 10, marked for identification.)**

22 MR. NIEW: Your Honor, it is about 27 pages long.

23 JUDGE STECKLER: These are timecards, correct?

24 MR. NIEW: Yes, correct.

25 JUDGE STECKLER: Are these all Mr. Gripp's timecards?

1 MR. NIEW: These are all Mr. Gripp's timecards.

2 JUDGE STECKLER: Mr. Needham, do you review
3 timecards?

4 THE WITNESS: Not anymore, I do not.

5 JUDGE STECKLER: When did you stop?

6 THE WITNESS: Sometime either at the end of either
7 2017 or the beginning of 2018.

8 JUDGE STECKLER: Thank you.

9 Q BY MR. NIEW: Mr. Needham, if you review somebody's
10 timecard, such as Brett Gripp, are you able to tell what
11 machine the person has been working on, or what job they
12 were doing?

13 A Yes.

14 Q Did you review these timecards weeks ago, for any
15 purpose?

16 A Review them?

17 Q Yes.

18 A Yes, I have.

19 Q And for what purpose?

20 A To see how many days that Brett actually operated
21 equipment.

22 Q Do you know, offhand, what pages or what dates would
23 show when Brett operated equipment?

24 A I believe there was one in December.

25 Q Go to the timecard of the week ending December 15,

1 2018. Would you look at that?

2 A Yep.

3 Q What do you believe from that timecard as to Mr.

4 Gripp working on any equipment?

5 A On Monday, December 10th, he was down at Terrell's
6 Dump Site in Pleasant Valley, Iowa, and he put "Sweep" on
7 his timecard for a machine, which would have been a skid-
8 loader with a broom on it.

9 Q And how many hours does that show?

10 A Seven and a half.

11 Q In your review of all of Brett Gripp's timecards, was
12 there a second day you were able to locate some machine
13 time by Mr. Gripp?

14 A Yeah, I believe in April of 2019, I don't remember
15 the exact date, but I believe it was in April, he has got
16 -- I know it is one hour on one of the John Deere 310's.

17 Q Could it be in May?

18 A It very well could -- it might be in May.

19 Q Can you look at the timecard ending 5-25-19?

20 A Yes, and that was on -- it appears to be Friday, May
21 24th, '19. The last line, he filled a rock box for one
22 hour on a John Deere 310.

23 Q What does that mean, "filled a rock box?"

24 A A 310, it is a loader-backhoe, so it has got a bucket
25 on the front. You go drive a bucket around a pile, and

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 put it inside a -- basically it is a -- we call it a rock
2 box. You dump rock in it, and then the excavator can
3 scoop out of that to bed the pipe with.

4 JUDGE STECKLER: Mr. Needham, in reviewing this, do
5 you recognize any -- there are some scratch-outs on the
6 column, the "Regular." It went from four -- somebody's
7 handwriting there, to two, and then two overtime.

8 THE WITNESS: Yes.

9 JUDGE STECKLER: Do you recognize that handwriting?

10 THE WITNESS: Yes, that would be Casie Morehead.

11 JUDGE STECKLER: So Casie Morehead changed that
12 timecard?

13 THE WITNESS: Yes, to get it -- Brett was an employee
14 that got paid overtime after forty hours.

15 JUDGE STECKLER: So that was all overtime then, but
16 only two hours were overtime, and two hours were regular;
17 correct?

18 THE WITNESS: That is correct.

19 JUDGE STECKLER: And then later in the day when he
20 was filling the rock box, it was one hour of overtime
21 straight, correct?

22 THE WITNESS: Correct. One hour of overtime, no
23 regular time.

24 JUDGE STECKLER: Okay, I just wanted to make sure I
25 am understanding.

1 Thank you.

2 THE WITNESS: Uh-huh.

3 MR. NIEW: Can we have Exhibit --

4 JUDGE STECKLER: Are we moving 10? Are you moving
5 Respondent's Exhibit 10, Mr. Niew?

6 MR. NIEW: I -- I thought it was already admitted,
7 but I will move to admit 10. I am offering it.

8 JUDGE STECKLER: Mr. Needham, is this something that
9 is kept in the normal course of business at Needham
10 Excavating, Inc.?

11 THE WITNESS: Yes, it is.

12 JUDGE STECKLER: And where do you keep these
13 documents, the timecard documents?

14 THE WITNESS: At the end of -- well, currently, our
15 timecards are all submitted electronically. Back in 2019,
16 these cards, after payroll was processed, Casie would scan
17 them in, and then they would get filed onto the server.

18 JUDGE STECKLER: And how long do you retain these
19 documents?

20 THE WITNESS: We have not thrown any away that I can
21 recall.

22 JUDGE STECKLER: Any objection from the General
23 Counsel?

24 MR. WILLIAMS: No objection, Your Honor.

25 JUDGE STECKLER: Ms. --

1 MS. LaROSE: Your Honor, I -- I will argue my
2 objections to this document in my brief.

3 JUDGE STECKLER: Thank you.

4 Respondent's Exhibit 10 is admitted.

5 **(Respondent's Exhibit 10, received into evidence.)**

6 MR. NIEW: Respondent's Exhibit 11.

7 **(Respondent's Exhibit 11, marked for identification.)**

8 Q BY MR. NIEW: I am showing you what is our RX-11. We
9 are going to scroll through those.

10 JUDGE STECKLER: Okay, but I can't see them, so we
11 will need to...

12 Have we discussed this before with you, Mr. Needham?

13 THE WITNESS: I -- I think -- yeah, we have
14 definitely discussed them, but I don't know to what
15 extent.

16 JUDGE STECKLER: These came from the pre-hearing
17 exhibits, the pre-election hearing exhibits; is that
18 correct, Mr. Needham?

19 THE WITNESS: No, I believe this was part of the
20 Union's subpoena, but I could be wrong. This is the
21 payroll records.

22 Q BY MR. NIEW: My question is, to this exhibit, RX-12,
23 did you personally --

24 JUDGE STECKLER: Excuse me, Mr. Niew. Are we still
25 on 11 or is this 12?

1 MR. NIEW: 11.

2 JUDGE STECKLER: About how much more do you have, Mr.
3 Niew?

4 MR. NIEW: At least a half hour, but maybe less.

5 JUDGE STECKLER: Okay --

6 MR. NIEW: We have been adding exhibits, and there is
7 only one witness we can get these exhibits through, and
8 that is Mr. Nick Needham. It is going to take a few
9 minutes.

10 JUDGE STECKLER: Okay. So we are on 11 then?

11 MR. NIEW: Yes, Your Honor.

12 JUDGE STECKLER: Thank you.

13 Q BY MR. NIEW: Nick, I want to make sure you prepared
14 all of R-1 1.

15 A Yes.

16 MR. NIEW: Move to admit 11.

17 JUDGE STECKLER: What do these payroll records
18 reflect, Mr. Needham, to the best of your knowledge?

19 THE WITNESS: Was that directed at me, Judge?

20 JUDGE STECKLER: Yes, sir.

21 THE WITNESS: That is a Weekly Payroll Report showing
22 the check date, the total hours worked, gross pay, and
23 then any additional reimbursements that they may have.

24 JUDGE STECKLER: Okay, for what period of time did
25 you run these?

1 THE WITNESS: I believe that is January 1st of 2019
2 to June 29th of 2019.

3 JUDGE STECKLER: Does that correspond with the
4 payroll -- with running up to the payroll period before
5 the election?

6 THE WITNESS: Yes.

7 JUDGE STECKLER: Did you also prepare for after the
8 election, or after June 29th?

9 THE WITNESS: I guess I would have if they were
10 requested.

11 JUDGE STECKLER: Okay. And these were run in -- it
12 looks like they were run in 2019; is that correct, all of
13 them?

14 THE WITNESS: Yes.

15 JUDGE STECKLER: On the 18th of --

16 THE WITNESS: It appears the 16th of July they were -
17 -

18 JUDGE STECKLER: Is it the 16th or the 18th? My eyes
19 are old.

20 THE WITNESS: I think it looks like 16.

21 JUDGE STECKLER: Okay, so what was the date of the
22 election?

23 THE WITNESS: I believe somewhere around the 12th.

24 JUDGE STECKLER: Okay, let's scroll down one, please,
25 to Mr. Hamann.

1 So this shows January through -- actually it shows
2 July, but --

3 THE WITNESS: It shows through July, Sunday -- I
4 don't remember the exact dates.

5 JUDGE STECKLER: It couldn't be any later than July
6 16th though, right?

7 THE WITNESS: Correct.

8 JUDGE STECKLER: Speaking of Mr. Hamann, did he work
9 at all after July 16th, 2019?

10 THE WITNESS: Yeah, I believe he worked a little in
11 the fall of '19.

12 JUDGE STECKLER: Has he worked in 2020?

13 THE WITNESS: I do not believe he worked in 2020,
14 because with COVID and everything, we weren't real crazy
15 busy --

16 JUDGE STECKLER: Okay.

17 THE WITNESS: -- where we would have needed him at
18 all, and then he had -- he has worked a little bit in 2021
19 since the first of the year.

20 JUDGE STECKLER: Okay, so if you know, how much time
21 does he spend on the other projects, when you talk about
22 the tiling? Did you talk about the tiling?

23 THE WITNESS: No, I did not.

24 JUDGE STECKLER: But you heard the testimony about the
25 tiling; is that correct?

1 THE WITNESS: Yeah, I know he -- I know that is kind
2 of what his little excavating business is.

3 JUDGE STECKLER: Okay, so he would do a lot of that
4 possibly in the spring and summer and into the fall; is
5 that correct?

6 THE WITNESS: Well, probably more early spring, late
7 fall.

8 JUDGE STECKLER: Okay. Do you run these reports
9 regularly, or is this something that you prepared at the
10 end, on that specific date?

11 THE WITNESS: I just prepared it on a specific date.

12 JUDGE STECKLER: Okay, do you prepare them at other
13 times, as well?

14 THE WITNESS: If we need to look at something, yes.
15 But I mean, with them in there, with a couple clicks of a
16 button, I can have them on the computer screen back in the
17 office, so we usually don't present them for -- to stick
18 in a file, I guess.

19 JUDGE STECKLER: Okay. Objections to Respondent's
20 Exhibit 11.

21 MR. WILLIAMS: No objections.

22 MS. LaROSE: I -- I am very sorry to be interrupting.
23 I will argue my objections to this one in the brief.

24 JUDGE STECKLER: Okay, thank you.

25 Respondent's Exhibit 11 is admitted.

1 **(Respondent's Exhibit 11, received into evidence.)**

2 MR. NIEW: Okay, I would like to go to R-17, please.

3 **(Respondent's Exhibit 17, marked for identification.)**

4 JUDGE STECKLER: Mr. Niew, I will save you the
5 trouble. We can take administrative notice of this.

6 **(Respondent's Exhibit 17 is received into evidence.)**

7 MR. NIEW: Thank you, but I need to ask him a
8 question.

9 Q BY MR. NIEW: If you would look at, I think it is
10 Page 3, where it says "Voter Eligibility," do you see
11 that?

12 A Yes.

13 Q And it says "Payroll Period Ending June 29, 2019."

14 A Yes.

15 Q Now, going back to Respondent's Exhibit 11, was it
16 prepared for the voter eligibility period?

17 A I believe so, yes.

18 MR. NIEW: Your Honor, would it be appropriate to
19 take a brief break, right now?

20 JUDGE STECKLER: Mr. Niew, are you done questioning
21 Mr. Needham?

22 MR. NIEW: I am not done questioning Mr. Needham.

23 JUDGE STECKLER: It depends on the other Counsel.
24 Mr. Williams, do you need a break right now?

25 MR. WILLIAMS: No, I do not. I would rather try to

1 finish this witness.

2 JUDGE STECKLER: Ms. LaRose?

3 MS. LaROSE: Same, Your Honor.

4 JUDGE STECKLER: I'm sorry, I couldn't understand
5 you.

6 MS. LaROSE: I said, "Same, Your Honor."

7 JUDGE STECKLER: Okay, Mr. Niew, I am sorry to press
8 on like this, but Mr. Niew, if you would like to take a
9 break yourself, we will go off the record, but the rest of
10 us will wait here two minutes for you to get back, okay?

11 MR. NIEW: Let's just keep going as long as I can.
12 That is all I care about.

13 Will you put up Respondent's Exhibit 12, please?

14 **(Respondent's Exhibit 12, marked for identification.)**

15 *[Long pause]*

16 Q BY MR. NIEW: Can you explain what that document is?

17 A Yeah, that is a document that I put together from
18 week ending 6-15, which would include the last day of June
19 10th, 2019, the date that Brett Gripp was laid off, and
20 basically this document is showing that our -- our trucks
21 that were working on jobsites, that we did not have enough
22 work to keep four drivers busy for the weeks following
23 Brett Gripp's layoff.

24 Q And what documents did you use to prepare this
25 exhibit?

1 A That was all done through the review of timecards for
2 the company, of all company employees.

3 Q And when did you prepare this exhibit?

4 A Good question. I don't remember off the top of my
5 head.

6 Q Do you remember what year?

7 JUDGE STECKLER: Mr. Needham, I don't want you to
8 venture a guess. I mean, you have already testified that
9 you don't recall when it was prepared, so we will take
10 that as your answer, okay?

11 THE WITNESS: Okay.

12 Q BY MR. NIEW: Do you remember why this document was
13 prepared?

14 A I believe it was for the ULP that was filed against
15 us for Brett Gripp to prove that we did not have enough
16 work to keep all of our drivers busy, even having another
17 driver on the payroll.

18 JUDGE STECKLER: Okay, so Mr. Needham, let me
19 understand this correctly.

20 So he was laid off instead of fired, correct?

21 THE WITNESS: That's correct.

22 JUDGE STECKLER: And he was laid off because he was a
23 friend of the family, correct?

24 THE WITNESS: That is correct.

25 JUDGE STECKLER: Did he collect unemployment after

1 that?

2 THE WITNESS: I don't recall if he collected -- if he
3 filed unemployment right away or not.

4 JUDGE STECKLER: Okay, so from the get-go, he was a
5 employee, correct?

6 THE WITNESS: From our eyes, yes.

7 JUDGE STECKLER: Well, that --

8 THE WITNESS: In my eyes.

9 JUDGE STECKLER: Okay, and then you let him go
10 through the wet season because you needed the truck,
11 right?

12 THE WITNESS: Yeah.

13 JUDGE STECKLER: And then he mouthed off -- somewhere
14 in there, he mouthed off to your father, and that was the
15 final straw; is that correct?

16 THE WITNESS: That is correct.

17 JUDGE STECKLER: Okay, I just wanted to make sure I
18 was understanding all of this correctly. Thank you for
19 the clarification.

20 MR. NIEW: I -- I am not going to offer this exhibit.

21 JUDGE STECKLER: Okay.

22 MR. NIEW: I would like to go to R-16, please.

23 MR. WRIGHT: 16 was already admitted.

24 Q BY MR. NIEW: We show that 16 was admitted, but can
25 you explain what the purpose of 16 is?

1 A That was a follow-up e-mail to previous conversations
2 that I had had with Brad Hodapp, who is our insurance
3 agent. This one was August 1st of 2018, in regards to if
4 he had had back any EMR ratings for the company, if we
5 were to combine K & K and Needham Excavating, into one
6 company by the end of 2018.

7 JUDGE STECKLER: Mr. Needham, what was the date on
8 that, on the one before that. It looks like there was a
9 "one" there. Was there a previous e-mail?

10 THE WITNESS: No, there was not.

11 JUDGE STECKLER: Okay.

12 MR. NIEW: Can we go to 18 next, R-18?

13 I would like to confirm that R-16 was admitted, as
14 our records show.

15 JUDGE STECKLER: Mr. Molinaro, would you double-check
16 your list please?

17 THE COURT REPORTER: I show that it was received on
18 the second day, so that would have been last Friday.

19 JUDGE STECKLER: Thank you, Mr. Molinaro.

20 **(Respondent's Exhibit 18, marked for identification.)**

21 Q BY MR. NIEW: I am going to show you Exhibit 18.

22 *[Long pause]*

23 Q Have you seen this e-mail before?

24 A Yes, I have.

25 Q And you are the recipient, or one of the recipients?

1 A Yes.

2 Q And do you know what the purpose of this e-mail is?

3 A Yes. So, as I testified the other day, the beginning
4 of -- or January 1st of 2018, Needham Excavating's -- we
5 switched insurance carriers and agents at that time, and
6 as I testified, we had -- right after that first part of
7 the year, we started talking about consolidation of K & K
8 and Needham Excavating into one insurance -- combining the
9 companies for multiple reasons, but wanting to know the
10 implications to our EMR ratings for workmen's comp, and
11 this e-mail was sent from Brad as K & K Repair, Brad
12 Hodapp was also going to be picking up the K & K
13 insurance, and we did not get anything figured out prior
14 to the expiration of K & K's previous insurance policy, so
15 he sent me a couple quotes between Iowa Mutual and West
16 Bend Insurance, and at that time -- since we had not got
17 everything figured out with the consolidation, we extended
18 the K & K Repair and Service so we did not run out.

19 MR. NIEW: I offer Exhibit R-18.

20 MR. WILLIAMS: No objection.

21 MS. LaROSE: Mr. Niew, when was this uploaded to
22 SharePoint?

23 MR. WRIGHT: Today.

24 MR. NIEW: Today.

25 MS. LaROSE: And why was it just uploaded to

1 SharePoint today, when we were supposed to have all of our
2 exhibits up there by Thursday at noon -- by Wednesday,
3 Wednesday at noon?

4 MR. NIEW: Mr. Wright is going to have to handle
5 that, because he was involved. I was not part of that.

6 MR. WRIGHT: Your Honor, this is being offered as a
7 rebuttal exhibit, similar to 17. Exhibit 17 was not
8 uploaded until, I believe, Friday. It was following
9 testimony about, I believe, from Joe Needham about when
10 the companies were combined when they first started
11 talking about them being combined.

12 So it is a rebuttal exhibit. We did not know that
13 this was going to be an issue before it came up.

14 JUDGE STECKLER: Ms. LaRose, correct me if I am
15 wrong.

16 In your subpoena, this type of thing --

17 MS. LaROSE: We did, Your Honor. I -- I am -- I am
18 asking, in part, because I am playing catch up a little
19 bit. You know, we downloaded the Employer's exhibits, and
20 I am seeing documents come up that don't actually look
21 like rebuttal, but, yeah, I will take Mr. right's
22 presentation, and we can just move on.

23 JUDGE STECKLER: Well, let me ask, was it produced to
24 you I -- as part of the subpoena response?

25 MS. LaROSE: No. The Employer produced many, many,

1 many, may, many files, and they are all like individual
2 files, and in many cases, they are individual e-mails that
3 we have to open and go through individually, so I am sorry
4 I don't have a complete summary of everything that they
5 produced to us. It is possible that this document is in
6 there, but I could not tell you for certain, I am sorry.

7 JUDGE STECKLER: Okay. Respondent's Exhibit 18 will
8 be admitted, however, Ms. LaRose, if at sometime between
9 now and the next date we reconvene, if you could check,
10 and let me know, that would be quite helpful.

11 MS. LaROSE: Thank you, Your Honor.

12 **(Respondent's Exhibit 18, received into evidence.)**

13 MR. NIEW: Now, let's go to R-19, please.

14 JUDGE STECKLER: Is this another one that was just
15 uploaded today?

16 MR. NIEW: Yes.

17 **(Respondent's Exhibit 19, marked for identification.)**

18 MR. NIEW: And this is a rebuttal document as to Mr.
19 Brett Gripp's testimony.

20 JUDGE STECKLER: Testimony about what?

21 MR. NIEW: About his not getting reimbursed and -- or
22 never coming to the office.

23 MS. LaROSE: 19, is that what this is --

24 MR. NIEW: Your Honor, to save some time, can we have
25 Exhibit R-20 also reviewed, because they are part and

1 parcel together.

2 **(Respondent's Exhibit 20, marked for identification.)**

3 Q BY MR. NIEW: Looking at this, it appears that
4 Exhibit 20 has all of 19, so I am not going to ask any
5 questions on 19.

6 I would like you to just review R-20.

7 JUDGE STECKLER: Did you prepare this, Mr. Needham?

8 THE WITNESS: Yes, I did.

9 Q BY MR. NIEW: Can you explain what each page of R-20
10 is?

11 A The first page is a receipt that Brett Gripp turned
12 in to the office for -- it looks like diesel fuel that was
13 purchased on a credit card.

14 JUDGE STECKLER: Was this on his own credit card?

15 THE WITNESS: It was not. So this -- what is the
16 date on this one?

17 So, on 4-4 on -- so he would have turned his
18 paperwork in the following Sunday, and early Monday
19 morning, before he went to work, and on April 8th, Casie
20 Morehead, that was her first day at Needham Excavating --
21 so what ended up happening is Brett turned a receipt in,
22 and it got marked as "Gripp personal," and Brett did not
23 mark anything on it. It was -- it was assumed that Brett
24 Gripp had to use his own personal credit card because he
25 never had a Needham Excavating credit card assigned to

1 him.

2 JUDGE STECKLER: Okay, and what about the Truck 96?
3 Is it 96 or 46 on there?

4 THE WITNESS: 46.

5 JUDGE STECKLER: And who would have wrote that?

6 THE WITNESS: That would have been Brett's
7 handwriting there.

8 Q BY MR. NIEW: What is the next page showing up?

9 A The next page is a record, a journal record out of
10 our Sage 100 contracting, showing that there was a check
11 written to Brett Gripp for the \$90 that matches the above
12 receipt for -- as I said, it was assumed at the time that
13 it was on Brett's personal credit card.

14 Q Is --

15 JUDGE STECKLER: When you keep saying, it was assumed
16 it was on his personal credit card, do you have evidence
17 that it was on any other credit card?

18 THE WITNESS: Yes, I do, Judge. It is on, I think,
19 the third or fourth page.

20 JUDGE STECKLER: Okay.

21 THE WITNESS: And then this is just a copy of a
22 screenshot of the check register that -- yeah, it shows
23 the Brett Gripp check that was written on 4-11. It would
24 be the third one -- actually, the check date was 4-16, but
25 there is no dollar amount because it got voided out.

1 Q BY MR. NIEW: Okay.

2 A And then, on the fourth page here, down -- there is a
3 charge on 4-4 to Circle K in Rock Island on David Carter's
4 credit card. So Brett would have borrowed Dave's credit
5 card to go put fuel in the truck that day.

6 JUDGE STECKLER: Was there a policy about letting
7 other people use their credit card?

8 THE WITNESS: It was allowed if they were working
9 together.

10 And then this goes into a second time that Brett
11 Gripp, on this one, I believe he borrowed Brandon McKay's
12 credit card, as they were working out of town that
13 weekend, and it was the same situation. Brett, he just
14 turned the receipt in like he was supposed to, and Casie
15 just assumed that those receipts were put on a personal
16 credit card since he did not have a company credit card,
17 so these are the two checks that Brett Gripp was
18 reimbursed for, and brought back to the shop --

19 JUDGE STECKLER: Okay, just scroll back up a bit,
20 please, Mr. Wright. Okay, scroll back up to the receipt.

21 The receipt has the last digits of the credit card on
22 them, do they not?

23 THE WITNESS: Yes, they do.

24 JUDGE STECKLER: Okay, so was Casie still a fairly
25 new employee at that time?

1 THE WITNESS: Yes. Like I said, she started April
2 8th.

3 JUDGE STECKLER: Okay, so are you saying that she
4 didn't know to check the credit card against the credit
5 card number?

6 THE WITNESS: No, she -- see how Brett marked on
7 there, "Brett Gripp credit card," or "Brett Gripp CC?"

8 JUDGE STECKLER: Yes.

9 THE WITNESS: So she just, I guess, assumed that that
10 was his personal credit card.

11 JUDGE STECKLER: Okay, so -- okay, I will leave it
12 there. Thank you.

13 Q BY MR. NIEW: Now, on R-20, are those documents kept
14 in the ordinary course of business?

15 A Yes, they are.

16 Q And how long do you maintain those records?

17 A As I said, I don't ever remember getting rid of
18 anything.

19 Q Was R-20 taken from the records of Needham
20 Excavating, Inc.?

21 A Yes.

22 MR. NIEW: I would offer R-20.

23 JUDGE STECKLER: Objections?

24 MR. WILLIAMS: No objection, Your Honor.

25 MS. LaROSE: No objection, Your Honor.

1 JUDGE STECKLER: Respondent's Exhibit 20 is admitted.

2 **(Respondent's Exhibit 20, received into evidence.)**

3 MR. NIEW: Respondent's Exhibit 21, this is not for
4 the witness, but I would like to get it admitted.

5 **(Respondent's Exhibit 21, marked for identification.)**

6 MR. NIEW: R-21 is part of the changes to the
7 transcript of GC Exhibit 6.

8 MR. WILLIAMS: No objection, Your Honor.

9 MS. LaROSE: No objection, Your Honor.

10 JUDGE STECKLER: Respondent's Exhibit 21 is admitted.

11 **(Respondent's Exhibit 21, received into evidence.)**

12 JUDGE STECKLER: And are you moving General Counsel's
13 Exhibit 6 also, Mr. Williams?

14 MR. WILLIAMS: Yes, I am. I would offer GC-Exhibit 6
15 into evidence at this time.

16 JUDGE STECKLER: Objections?

17 MR. NIEW: None.

18 JUDGE STECKLER: General Counsel's Exhibit 6 is
19 admitted.

20 **(General Counsel's Exhibit 6, received into evidence.)**

21 Q BY MR. NIEW: Now, Nick, was the termination of Adam
22 or Brett have anything to do with union activity?

23 A Absolutely not.

24 Q Did the organizing effort of Local 150 play any role
25 in -- of terminating Adam or Brett?

1 A Absolutely not.

2 Q I want you to assume that there was no organizing
3 effort. With that assumption in mind, would have Needham
4 Excavating have let Adam and Brett go, notwithstanding any
5 other activity?

6 A Yes.

7 Q Now, as to Brett Gripp, did you ever park a vehicle,
8 at any time, anywhere Brett Gripp's house?

9 A No.

10 Q And are you aware of any employee of Needham that may
11 have parked a vehicle in front of Brett Gripp's house?

12 A No.

13 Q Did you direct any employee to park any vehicles in -
14 - at or near Brett Gripp's house?

15 A No.

16 MR. NIEW: Can I have about two minutes to review my
17 notes, to make sure I got everything?

18 JUDGE STECKLER: Yes, sir.

19 We will be off the record for two minutes.

20 *[Off the record]*

21 JUDGE STECKLER: Back on the record.

22 Anything else?

23 MR. NIEW: Yes, Your Honor. No further questions for
24 this witness.

25 JUDGE STECKLER: Mr. Williams?

1 MR. WILLIAMS: Yes. Thank you.

2 CROSS EXAMINATION

3 Q BY MR. WILLIAMS: Mr. Needham, you said on July the
4 1st, 2019, you overheard Chad Havill and Curt McKinley
5 talking around 4:00 p.m., correct?

6 A Yes.

7 Q Where were you located at the time?

8 A I was in my office.

9 Q How far away is that from where they were?

10 A About 45 feet.

11 Q Okay, and when you heard them talking, what, if
12 anything did you do?

13 A I just walked out of my office and walked down to
14 Curt's to see what was -- to see what they were talking
15 about.

16 Q Okay, and when you walked down there to Curt and
17 Chad, who else was present?

18 A I know -- I don't remember a hundred percent if Joe
19 was there, but I am pretty sure that he was standing out
20 in the hallway, as well.

21 Q Okay, how far away was Joe to the rest of -- to you
22 and Curt and Chad?

23 A We were all kind of standing there -- it is kind of
24 hard to explain.

25 The hallway makes an "L" right at Curt's office, and

1 they were all just kind of conjugated at the end of the
2 hallway before it goes out to the parts room.

3 Q And what did -- what did Chad Havill say to Curt
4 McKinley?

5 A He said that him and Adam and everybody else on the
6 site quit at 3:30 and headed home.

7 Q Did he say anything else that you recall?

8 A No, I think they just talked about -- I think Chad
9 made some comments about how far they got, and they were
10 at a good stopping point for the day.

11 Q How far is the Dan Dolan's job from Needham
12 Excavating, Inc.?

13 A I would say somewhere between 20 and 25 minutes.

14 Q Now, you also testified that you received a call from
15 Kevin Dolan --

16 A Yes.

17 Q And what time was that?

18 A Approximately 7:30.

19 Q And what -- what did Kevin say to you?

20 A He was asking me if -- he wanted an updated cost of
21 where they were. I think they had something to do to get
22 a draw into the bank or something after that much.

23 JUDGE STECKLER: When did you say the updated cost
24 estimate --

25 THE WITNESS: It would have been probably sometime

1 the morning of the 9th.

2 JUDGE STECKLER: Okay.

3 Q BY MR. WILLIAMS: Was anything else discussed with
4 Kevin Dolan?

5 A No, I -- nothing that sticks out. I am assuming we
6 talked schedule of how soon he could get other contractors
7 going in there.

8 Q Okay. And I believe that you testified that you
9 received a call from the City Inspector that same day?

10 A Yes.

11 Q Okay, who was the City Inspector?

12 A Erin Brunner.

13 Q Okay, and you received a call from her around 8:00
14 a.m.?

15 A Yes.

16 Q Okay, what was the -- what was discussed during that
17 call?

18 A Just that when they -- when they got done down to the
19 pipe that they had, that there was backfall on that piece
20 of pipe that was installed from the year prior.

21 Q Okay. Did she say anything else?

22 A Not that day, no.

23 Q What time did you send the text message -- I believe
24 it was a text message, correct, to Adam VanOpDorp, telling
25 him to come meet with you at Needham Excavating, Inc.?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A I believe it was around like 1:45, 2:00 o'clock,
2 something like that.

3 Q Okay. And what was -- what time was the actual
4 meeting? What time did he show up?

5 A At a little bit before 3:30, if I remember correctly.

6 MR. WILLIAMS: I have no further questions, Your
7 Honor.

8 JUDGE STECKLER: Ms. LaRose?

9 MS. LaROSE: Can I have like two minutes, please?

10 JUDGE STECKLER: Off the record for two minutes,
11 please.

12 *[Off the record]*

13 THE COURT REPORTER: Okay, go ahead.

14 JUDGE STECKLER: Back on the record. Thank you.
15 Go ahead, Ms. LaRose.

16 CROSS EXAMINATION

17 Q BY MS. LaROSE: Mr. Needham, I am going to put up on
18 the screen what we have marked as Union's Exhibit 85.

19 **(Union's Exhibit 85, marked for identification.)**

20 JUDGE STECKLER: It is not showing up on our screens.
21 Okay.

22 Q BY MS. LaROSE: Mr. Needham, that is Clint McKinley,
23 right?

24 A Yes.

25 Q And he is pictured in front of a semi-truck, is that

1 right?

2 A Yes.

3 Q Okay.

4 MS. LaROSE: Your Honor, I am going to move for
5 admission of this exhibit.

6 MR. NIEW: Objection as to foundation.

7 JUDGE STECKLER: Ms. LaRose, can you supply a little
8 here?

9 MS. LaROSE: Sure, Your Honor. I mean, I think the -
10 - I think the main issue here is does the witness
11 recognize this individual, and he says that he does. This
12 individual is photographed in front of a truck.

13 We are contending that he is largely a truck driver,
14 so I think it is relevant whether who took the picture is
15 irrelevant.

16 JUDGE STECKLER: But we don't know when, correct?

17 MS. LaROSE: We do not, Your Honor. That is true.

18 JUDGE STECKLER: Are there objections?

19 MR. NIEW: Same objection; foundation.

20 JUDGE STECKLER: Well, Mr. Williams?

21 MR. WILLIAMS: No objection, Your Honor.

22 JUDGE STECKLER: Union's Exhibit 85 will be admitted,
23 but will be given the weight it deserves.

24 **(Union's Exhibit 85, received into evidence.)**

25 MS. LaROSE: Thank you, Your Honor.

1 One moment.

2 [Long pause]

3 MS. LaROSE: Off the record for a second, please,

4 Your Honor.

5 JUDGE STECKLER: Off the record, Mr. Molinaro.

6 [Off the record]

7 JUDGE STECKLER: Okay, go ahead.

8 MS. LaROSE: I apologize, Your Honor.

9 Q BY MS. LaROSE: Mr. Needham, I am going to impose on
10 you, on your Counsel, to please pull up for us
11 Respondent's Exhibit No. 10.

12 MS. LaROSE: Mr. Wright, do you think you can do
13 that?

14 [Long pause]

15 MS. LaROSE: Thank you. And if you don't mind, Mr.
16 Wright, just go to the timecard with the week ending June
17 8, 2019. It might be one of the last ones, like the
18 second to last one?

19 Thank you, Mr. Wright. I appreciate it.

20 Q BY MS. LaROSE: Mr. Needham, you testified to two --
21 I think you said two different instances where Mr. Gripp
22 was operating heavy equipment, and I think those instances
23 did -- would have included December 10, 2018 and May 24
24 or 25th, I think it was a little confusing, 2019.

25 Do you recall that testimony?

1 A Yes.

2 Q It indicates here that on June 8, 2019, Mr. Gripp ran
3 the Kubota. Do you see that entry right there?

4 A Yes.

5 Q And that is another instance of him running heavy
6 equipment; correct?

7 A I would not consider that heavy equipment. That is a
8 UTV.

9 JUDGE STECKLER: I'm sorry, what is a UTV?

10 THE WITNESS: A utility vehicle, like a -- it is a --
11 earlier in testimony, I believe when I was on, there was a
12 picture at Cubby Park of a mini-material hauler basically.
13 It is a utility vehicle with a dump body hauling sand onto
14 the baseball fields at Cubby Park in West Branch.

15 JUDGE STECKLER: Thank you.

16 MS. LaROSE: One moment, please, Your Honor.

17 [Long pause]

18 Q BY MS. LaROSE: Okay, thank you. Thank you for that
19 explanation, Mr. Needham.

20 Okay. I am going to show you what's been marked as
21 Union's Exhibit 88.

22 **(Union's Exhibit 88, marked for identification.)**

23 MS. LaROSE: Go ahead and scroll through that, Mr.
24 Connolly, please.

25 [Long pause]

1 Q BY MS. LaROSE: Mr. Needham, have these -- have you
2 had an opportunity to look through this document that I
3 have marked as Union's Exhibit 88?

4 A Yep.

5 Q This is your Marital Dissolution Order with the Scott
6 County Court in Iowa; is that right?

7 A Yes.

8 Q And on Page 5 here, it says that Carissa has assigned
9 to Nick all her rights, title, and interest in the Iowa
10 limited liability company known as K & K Repair and
11 Contracting LLC, effective as of January 1, 2016.

12 Do you see that language in there?

13 A Yep.

14 MS. LaROSE: Scroll up a little bit, Mr. Connolly,
15 just to the top of the page.

16 Q BY MS. LaROSE: And that was filed July 6, 2016?

17 A Yes *[Voice transmission garbled]*

18 Q I'm sorry, I didn't hear that. You cut out a little
19 bit.

20 A That is correct.

21 Q Okay, thank you.

22 MS. LaROSE: Your Honor, I am going to move for
23 admission of Union's Exhibit 88.

24 JUDGE STECKLER: Okay.

25 MR. WILLIAMS: No objection.

1 MR. NIEW: Objection as to foundation, relevance...

2 JUDGE STECKLER: Ms. LaRose, would you like to
3 respond?

4 MS. LaROSE: We have had a lot of testimony on the
5 acquisition of K & K, Your Honor, and -- from both sides,
6 so if it is not relevant, then both parties have poured a
7 lot of into a subject that has nothing to do with the
8 issues at hand.

9 JUDGE STECKLER: Mr. Needham, were there any side
10 agreements to the marital dissolution?

11 THE WITNESS: Can you elaborate on the side
12 agreements?

13 JUDGE STECKLER: Separate documents relating to the
14 dissolution, and whose property was what, specifically.

15 THE WITNESS: Yes, agreements as per -- between me
16 and my ex-wife?

17 JUDGE STECKLER: Yes, sir.

18 THE WITNESS: No, there were no side agreements.

19 JUDGE STECKLER: Okay, so according to this document,
20 if I am understanding this correctly -- could you scroll
21 down just a tad, please, Mr. Connolly?

22 Okay, there we go.

23 She essentially signed over the company to you; is
24 that correct?

25 THE WITNESS: That is correct.

1 JUDGE STECKLER: Union's Exhibit 88 is admitted.

2 **(Union's Exhibit 88, received into evidence.)**

3 MS. LaROSE: Thank you, Your Honor.

4 Q BY MS. LaROSE: Mr. Needham, on July 22nd of 2019,
5 you had a text message conversation with Chad Havill where
6 he was talking about Tracey Marshall's substance abuse
7 problem, right?

8 A I don't recall the exact date, but I know that Chad
9 sent me a message about that.

10 Q And you told Chad, and I am going to quote, "We have
11 not called out anyone about this. We have asked around
12 everyone if they have seen anything on the jobsite, and
13 that is as far as I have taken it," unquote.

14 Do you recall sending a text saying that?

15 A Yes.

16 JUDGE STECKLER: When was that text, Ms. LaRose?

17 MS. LaROSE: July 22nd, 2019, Your Honor.

18 JUDGE STECKLER: Thank you.

19 Q BY MS. LaROSE: And this came up because the Company
20 had to send Chad Havill to cover the QuikTrip job one day
21 when Tracey Marshall didn't show up for work at all, is
22 that right?

23 A No. Chad Havill did not work for Needham Excavating
24 on July 22 of 2019.

25 Q I think the incident happened before July 22nd, so I

1 will correct myself.

2 This conversation was inspired by the fact that Chad
3 Havill had to cover for Tracey Marshall because he didn't
4 show up for work, because of substance abuse, is that
5 right?

6 A No. That is not the reason that Tracey did not show
7 up. He had an issue with (b) (6), (b) (7)(C)

8 (b) (6), (b) (7)(C) and he called in and said he had to stay home with
9 (b) (6), (b) (7)(C)

10 JUDGE STECKLER: Okay. Mr. Needham, let me clarify a
11 couple things here, just to keep the record straight and
12 keep things in my head.

13 Was there a time when Mr. Marshall had a substance
14 abuse issue?

15 THE WITNESS: Not -- not that I am aware of, no, and
16 he -- as long as he has been employed, I -- that was the
17 first reporting of anything -- this come in from a ex-
18 employee.

19 JUDGE STECKLER: Okay, let me ask you.

20 So -- so did you do anything about it? Was he --

21 THE WITNESS: I had a conversation with Tracey about
22 it, yes.

23 JUDGE STECKLER: And Mr. Marshall denied having a
24 substance abuse issue?

25 THE WITNESS: Yes. He is --

1 JUDGE STECKLER: What type of work does Mr. Marshall
2 do?

3 THE WITNESS: He is primarily an operator.

4 JUDGE STECKLER: What, if any, drug policy does
5 Needham Excavating have about -- about that sort of thing?

6 THE WITNESS: Nothing in writing.

7 JUDGE STECKLER: Well, it is -- it is testified that
8 you don't have any policies in writing, correct?

9 THE WITNESS: Correct.

10 JUDGE STECKLER: And --

11 THE WITNESS: So has Tracey ever showed up for work
12 intoxicated or under the influence of other drugs, no.

13 JUDGE STECKLER: What does your insurance require
14 regarding drug testing employees?

15 THE WITNESS: Drug testing is not required.

16 JUDGE STECKLER: What about for the truck drivers who
17 are driving between Illinois and Iowa?

18 THE WITNESS: I believe they have to have a drug test
19 during their annual D.O.T. physical.

20 JUDGE STECKLER: Okay, do you -- can you
21 simultaneously test those employees?

22 THE WITNESS: If we -- if we assume that there is an
23 issue, or they are under the influence, yes, in the past
24 we have taken an employee in to get drug tested on the
25 spot, and he was --

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Discharged?

2 THE WITNESS: Yes.

3 JUDGE STECKLER: Okay.

4 Ms. LaRose, you may continue.

5 Q BY MS. LaROSE: And the Company did drug test some
6 laborers that same month, right?

7 A Not that I am aware of, no.

8 Q So, is the drug testing taking place without your
9 knowledge?

10 A The only time that we have ever had to do drug
11 testing in the history of the Company is -- there's -- I
12 am trying to think what project it was.

13 Q The question, Mr. Needham, was, is it possible there
14 was drug testing taking place without your knowledge?

15 MR. NIEW: Objection, anything is possible.

16 JUDGE STECKLER: Mr. Niew, I think the question is
17 reasonable, so I am going to allow it.

18 THE WITNESS: I am one of four managers in the
19 Company that has the ability to discipline or question an
20 employee, so I guess anything is possible.

21 JUDGE STECKLER: Is --

22 Q BY MS. LaROSE: Where --

23 JUDGE STECKLER: Go ahead, Ms. LaRose. I'm sorry.

24 Q BY MS. LaROSE: Where does the Company have its drug
25 testing done?

1 A As I said, the only spontaneous drug test that I can
2 recall is the Ronnie Bailey one, and I am honestly not
3 sure where he was taken, to get his drug test completed.

4 Q Well, did the Department of Transportation requires
5 you folks to randomly test your drug -- your truck
6 drivers, right?

7 A That I don't know.

8 Q Well, who would know? Who would know whether the
9 Company is in compliance with that regulation?

10 A I can't answer that.

11 Q So, as you sit here, what you are telling me is,
12 despite the fact that there are a plethora of Department
13 of Transportation regulations requiring that you folks
14 have a drug testing program for your over-the-road
15 drivers, you have no idea whether you are in compliance
16 with that?

17 MR. NIEW: Objection, improper impeachment. No
18 foundation.

19 JUDGE STECKLER: I think there is sufficient
20 foundation.

21 You may answer it, Mr. Needham.

22 THE WITNESS: I do not know.

23 Q BY MS. LaROSE: And you don't know who would know.

24 A Sitting here, Joe maybe.

25 JUDGE STECKLER: But Mr. Needham, are you sure of

1 that, or --

2 THE WITNESS: I said maybe. I said maybe.

3 JUDGE STECKLER: I understand.

4 Would anyone else, perhaps, be in charge of that?

5 THE WITNESS: I don't know.

6 Q BY MS. LaROSE: Those regulations exist to preserve -
7 - because -- those regulations exist because of national
8 policy regarding safety, right?

9 A I would assume.

10 Q And so, the Company is super-focused on whether Adam
11 is using his cellphone during the working day, but it has
12 no idea whether its truck drivers are in compliance with
13 the law relative to safety. Do I understand your
14 testimony correctly?

15 MR. NIEW: Objection; argumentative.

16 MS. LaROSE: I will withdraw the question, Your
17 Honor.

18 Q BY MS. LaROSE: If the Company -- strike that.

19 Well, let me make sure that I understand.

20 Chad did cover for Tracey on the day I described,
21 correct?

22 A Chad worked and Tracey didn't, yes.

23 Q Tracey did not show up for work that day, right?

24 A Tracey called in with an excused absence that day.

25 Q There is nothing in his personnel file to suggest

1 that, right?

2 A No, as is nobody else's.

3 Q We are just going to have to rely on your word for
4 that, right?

5 A Yes, ma'am.

6 MS. LaROSE: Your Honor, just one moment. I just
7 want to check one more thing.

8 JUDGE STECKLER: Off the record, please.

9 *[Off the record]*

10 THE COURT REPORTER: We are on.

11 JUDGE STECKLER: Thank you.

12 Ms. LaRose?

13 MS. LaROSE: Thank you.

14 Q BY MS. LaROSE: Mr. Needham, can you take a look at
15 the document I have marked as Union's Exhibit 86?

16 A Yep.

17 **(Union Exhibit 86, marked for identification.)**

18 Q BY MS. LaROSE: Can you review that, please?

19 A Yep.

20 Q Does that look like the text exchange that I
21 described to you earlier?

22 A Yep.

23 Q And Chad Havill's remarks are the ones in blue with
24 white writing at the top, is that right?

25 A That's correct.

1 Q And yours are in the gray bubble down below?

2 A Yep.

3 Q And black writing?

4 A Yes.

5 Q And you acknowledge in there that you had a person
6 come and talk to you about it, meaning talk to you about
7 Tracey Marshall's substance abuse problem; is that
8 right?

9 A Chad was the first one to come to me about a
10 substance abuse problem.

11 Q But you also say in there, and it would be
12 unnecessary if it were Chad who was the one person, as
13 you had only one person come and talk to you about it.
14 Well, there must have been someone else, right?

15 A I don't recall why I wrote that.

16 Q Okay, fair enough.

17 MS. LaROSE: Your Honor, I am going to move for the
18 admission of Union's Exhibit 86.

19 MR. NIEW: Objection as to foundation.

20 MS. LaROSE: Your Honor --

21 MR. NIEW: Your Honor, we don't know what date it
22 is. We don't know anything about it.

23 MS. LaROSE: The witness has indicated that July
24 22nd, 2019 is the right date. He has also identified
25 the conversation. He has identified who made what

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 remarks.

2 I think there is plenty of foundation for this,
3 Your Honor.

4 JUDGE STECKLER: Did I hold on one of the
5 Respondent's exhibits to get a better foundation? That
6 was 4; was that not 4 or 2?

7 MS. LaROSE: Your Honor, that was 4.

8 JUDGE STECKLER: If I admit this, I have to admit
9 4.

10 MS. LaROSE: Your Honor, I think what ended up
11 happening is that we -- yeah, I think we put 4 in,
12 because it --

13 JUDGE STECKLER: I said "Provisional," and then Mr.
14 Molinaro, I believe, you know, said, "Out," and I said
15 to leave it out. Is that correct, Mr. Molinaro?

16 THE COURT REPORTER: Yes. Yes, it is.

17 JUDGE STECKLER: Okay, so which way do you want it,
18 Ms. LaRose.

19 MS. LaROSE: Your Honor, of course I want ours in.

20 JUDGE STECKLER: I -- I understand -- I was about
21 to say, you can't have your steak and eat it too, but
22 there is something -- well, never mind.

23 MS. LaROSE: Your Honor, I am not sure what we
24 would be looking for in terms of foundation. Maybe that
25 is a better way to put my question.

1 We have got the date, we have got the two
2 participants in the conversation.

3 What else are we looking for?

4 JUDGE STECKLER: Okay, let's admit Respondent's
5 Exhibit 4 then, and we can argue about it in the briefs,
6 if necessary.

7 MS. LaROSE: Okay.

8 (Respondent's Exhibit 4, received into evidence.)

9 JUDGE STECKLER: And then, we will also admit
10 Union's Exhibit 86.

11 MS. LaROSE: Thank you, Your Honor.

12 (Union's Exhibit 86, received into evidence.)

13 [Long pause]

14 JUDGE STECKLER: That can also be argued on the
15 brief, if necessary.

16 MS. LaROSE: Okay, thank you.

17 Your Honor, those are all of my questions for Mr.
18 Needham.

19 JUDGE STECKLER: Mr. Niew, do you have any further
20 redirect for Mr. Needham?

21 MR. NIEW: I do.

22 REDIRECT EXAMINATION

23 Q BY MR. NIEW: Nick, do you remember reading your
24 divorce decree with respect to assigning K & K?

25 A Yes.

1 Q Do you know how K & K got into Joe's name?

2 A Yes, I do.

3 Q Could you explain that to us?

4 A As the divorce decree says, K & K got assigned to
5 me, and me and my father had another agreement outside
6 of the divorce decree, between us two, and we went to
7 the lawyer's office, and signed name to name to name,
8 and I guess, maybe I legally owned it for ten seconds.

9 MR. NIEW: No further questions.

10 JUDGE STECKLER: Mr. Williams?

11 MR. WILLIAMS: No further questions, Your Honor.

12 JUDGE STECKLER: Ms. LaRose?

13 MS. LaROSE: I have none.

14 JUDGE STECKLER: Mr. Needham, you can take a deep
15 breath. You are about to be excused as a witness again.

16 Please do not discuss your testimony with anyone
17 until after this hearing is over, and you will be one of
18 the...

19 Let's go off the record for a moment, please.

20 *[Off the record]*

21 THE COURT REPORTER: We are on.

22 THE COURT REPORTER: Okay.

23 JUDGE STECKLER: Thank you.

24 Based on our discussions during the off the record
25 time, we are not going to handle any other witnesses

1 today. We will reconvene on Monday, May 10th, 10:00
2 a.m. Eastern, 9:00 a.m. Central. I will send out a
3 Scheduling Order and amend the Zoom invite so that it
4 extends through that date.

5 Any questions at this time?

6 MR. NIEW: No, Your Honor.

7 MR. WILLIAMS: No, Your Honor.

8 JUDGE STECKLER: Hearing nothing else, we will be
9 adjourned until May 10th.

10 Thank you for your time.

11 MR. WILLIAMS: Thank you, Your Honor.

12 ***[Whereupon, the hearing was adjourned at 4:49 p.m.,***
13 ***until Monday, May 10, 2021.]***

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), in the matter of **NEEDHAM EXCAVATING, INC. (Respondent)** and **INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO, (Charging Party)**, Case No. 25-CA-239166 et al, on April 27, 2021, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, the hearing, that the exhibits (if any) are complete and no exhibits received in evidence or in the rejected exhibit files are missing.



David Molinaro, Official Reporter

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case Nos: 25-CA-239166, 25-CA-244670, 25-CA-245763 &
25-RC-243735

NEEDHAM EXCAVATING, INC.,

Respondent,

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL
150, AFL-CIO,

Charging Party.

Place: Video Conference
Date: May 10, 2021
Pages: 999 through 1119
Volume: 5 of 5

OFFICIAL REPORTERS

ARS REPORTING
22052 West 66th Street, Suite 314
Shawnee, Kansas 66226
(913) 422-5198

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25

In the Matter of:

NEEDHAM EXCAVATING, INC.,

Respondent,

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150, AFL-CIO,

Charging Party.

Case	25-CA-239166
Nos.	25-CA-244670
	25-CA-245763
	25-RC-243735

The above-titled matter came on for further hearing via video conference, pursuant to adjournment, before **THE HONORABLE SHARON L. STECKLER, Administrative Law Judge**, National Labor Relations Board, on Monday, the 10th of May, 2021, at 8:40 a.m. Central.

A P P E A R A N C E S

On Behalf of the General Counsel:

RAIFAEEL WILLIAMS, ESQ.
National Labor Relations Board - Region 25
Minton-Capehart Federal Building
575 North Pennsylvania Street, Room 238
Indianapolis, Indiana 46204
Phone: (317) 991-7630
Fax: (317) 226-5103
E-mail: raifael.williams@nllrb.gov

On Behalf of the Respondent:

STANLEY NIEW, ESQ.
JEFFREY WRIGHT, ESQ.
Law Offices of Stanley E. Niew, P.C.
1000 Jorie Boulevard, Suite 206
Oak Brook, Illinois 60523
Phone: (630) 586-0110
Fax: (630) 586-0120
E-mail: sniew@senlaw.net
jwright@pappaswright.com

ARS REPORTING LLC

22052 West 66th Street, Suite 314
Shawnee, Kansas 66226
Phone: (913) 422-5198

A P P E A R A N C E S

(Continued)

On Behalf of the Charging Party:

ELIZABETH A. LaROSE, ESQ.

JIM CONNOLLY, ESQ.

International Union of Operating Engineers,

Local 150, AFL-CIO, Local 150 Legal Department

6140 Joliet Road

Countryside, Illinois 60525

Phone: (708) 579-6633

Fax: (708) 588-1647

E-mail: elarose@local150.org

Courtroom Deputy:

SONJA SPIELBERG

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>V/D</u>	<u>COURT</u>
ANTONIO						
GONZALEZ	1010	1018	1019			
ADAM						
VANOPDORP	1026					
CHAD HAVILL	1029					
JOHN FULKS	1036					
	1041	1042	1045			
BRETT GRIPP	1050	1077	1081			
NICK NEEDHAM	1084				1086	
	1091				1107	
	1111					

1

E X H I B I T S

2

3

EXHIBITS**FOR IDENTIFICATION****IN EVIDENCE**

4

5

6 CHARGING PARTY/UNION

7

62

1004

1006

8

68

1066

1067

9

69

1064

1066

10

70

1075

1076

11

73

1061

1062

12

74

1056

1058

13

75

1055

1069

14

76

1081

1082

15

89

1013

1016

16

17 RESPONDENT/EMPLOYER

18

22

1086

1097

19

23

1097

1100

20

24

1100

1111

21

26

1112 REJ'D

1113

22

23

24

25

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

P R O C E E D I N G S

[Time Noted: 8:40 a.m.]

1 THE HONORABLE JUDGE SHARON STECKLER: On the
2 record, please, Mr. Molinaro.

3 THE COURT REPORTER: Okay, we are.

4 JUDGE STECKLER: Thank you.

5 Good morning.

6 This is May 10th for our fifth day of Needham
7 Excavating.

8 We have had some off-the-record discussions about
9 completing what has already been submitted in the
10 transcript.

11 Ms. LaRose, you had some offers to make?

12 MS. LaROSE: Union's Exhibit 62 is a demonstrative
13 exhibit that is a transcript of the July 9, 2019 meeting
14 that came in through Spencer -- that was in Spencer
15 Werthmann's testimony.

16 **(Union's Exhibit 62, marked for identification.)**

17 JUDGE STECKLER: Mr. Niew, do you have any
18 objections?

19 MR. NIEW: Yes, I do.

20 Exhibit -- Union's Exhibit 62 has little or no
21 value, page after page of unknown, and even into the
22 last page, 27, there is at least one statement by an
23 unknown person.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 How do we know who is making the statements,
2 whether or not those statements are relevant to what Ms.
3 LaRose is trying to prove up?

4 MS. LaROSE: So, Your Honor, we -- we have actually
5 played the portions that I think are material. The
6 witness identified them. There is no objection to that.

7 The purpose of this exhibit is to help Your Honor
8 see what was said. The identities of these relative few
9 "unknown" people are not -- are immaterial, because it
10 doesn't go to the purpose for which the meeting
11 transcript is being introduced.

12 If we don't introduce this transcript, it just
13 makes it harder on you, because you don't have in front
14 of you a written record that shows what it was that was
15 said. You have to listen to the thing from start to
16 finish. So all it does is make it more difficult for
17 the decision-maker, and I don't see the purpose of that.

18 JUDGE STECKLER: Was there -- wasn't there a
19 discussion about corrections that the Respondent was
20 going to make to that?

21 MS. LaROSE: Yes. Yes, Your Honor.

22 So, I -- I e-mailed -- I think we did talk about
23 this on the record previously, and I think we suggested
24 -- that I suggested that we handle this exactly the same
25 way that we did the April 2019 meeting, which is, if the

1 Respondent wants, they can submit their own list of
2 errata, as it were.

3 I sent a copy of this transcript to Respondent last
4 week on Wednesday, so there was sufficient time to do
5 that, and instead of doing either of those things,
6 Respondent is walking in and saying, "I think this thing
7 is useless because there is a few unknown entries in
8 it."

9 I just don't think that helps get this case done or
10 helps Your Honor make -- make a decision here.

11 JUDGE STECKLER: I am going to admit it and
12 Respondent will have the opportunity to submit a list of
13 corrections to the transcript, so Union's Exhibit 62 is
14 admitted.

15 MS. LaROSE: Thank you, Your Honor.

16 **(Union's Exhibit 62, received into evidence.)**

17 JUDGE STECKLER: Ms. LaRose, did you have
18 additional exhibits that you want to --

19 MS. LaROSE: No, Your Honor, I did just want to
20 note very quickly for the record, pursuant to our off-
21 the-record discussion, we have uploaded Union's Exhibit
22 86 and 88; Union's Exhibit 30 has also been uploaded
23 separately, into SharePoint. It was not part of what
24 had been previously marked as the group set of exhibits,
25 Union's Exhibit 30 through 34, and Union's Exhibit 62

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 has been swapped out for what was in the group
2 bookmarked Exhibit Union 50 through 63, and 62 has been
3 uploaded separately.

4 It is my understanding that Mr. Molinaro has a
5 complete handle on this, so I am just noting this for
6 the parties' purposes and your own, Your Honor.

7 JUDGE STECKLER: Thank you.

8 Any other preliminary matters before we move on to
9 rebuttal witnesses?

10 Did Respondent have any additional witnesses before
11 we move to rebuttal witnesses, before we do that?

12 MR. NIEW: We will probably have one more witness
13 after the rebuttal witnesses are done.

14 JUDGE STECKLER: So you will have your own rebuttal
15 witness?

16 MR. NIEW: Yes.

17 JUDGE STECKLER: Okay, then does Respondent rest?

18 MR. NIEW: After a rebuttal -- yes, Respondent
19 rests subject to rebuttal.

20 JUDGE STECKLER: Okay, at this time, I normally
21 give an opportunity to discuss settlement. Is that
22 still out of the picture?

23 MR. NIEW: It is out of the picture from
24 Respondent's point of view.

25 JUDGE STECKLER: In that case, we won't take off

1 any time from the record then.

2 General Counsel, are you ready to proceed for your
3 rebuttal?

4 MR. WILLIAMS: Yes, I am, but Your Honor, I thought
5 the -- when we left off in the last session was, I
6 think, Ms. LaRose was about to put on a witness, and we
7 stopped because it made more sense to bring that witness
8 in if he were going to resume, which we decided that we
9 were going to do.

10 JUDGE STECKLER: Okay, this is -- but this is all
11 rebuttal, correct?

12 MR. WILLIAMS: It is.

13 JUDGE STECKLER: Okay, then Ms. LaRose, can you
14 call your first witness for the day?

15 MS. LaROSE: Yes, Your Honor.

16 Mr. Connolly is just getting the witness set up in
17 the next room, Your Honor.

18 JUDGE STECKLER: We will go off the record then.

19 MS. LaROSE: Okay.

20 JUDGE STECKLER: Off the record.

21 *[Off the record]*

22 THE COURT REPORTER: We are on the record.

23 JUDGE STECKLER: All right, Ms. LaRose, your first
24 witness is?

25 MS. LaROSE: Antonio Gonzalez, Your Honor.

1 JUDGE STECKLER: Mr. Gonzalez, you have never
2 testified before in this matter, so I am going to have
3 you raise your right hand.

4 (Whereupon,

5 ANTONIO GONZALEZ
6 having been sworn/affirmed, was called as a witness
7 herein, and was examined and testified via video-
8 conference, as follows:)

9 JUDGE STECKLER: Please state your name and spell it
10 for the record.

11 THE WITNESS: Antonio Gonzalez, A-n-t-o-n-i-o,
12 Gonzalez, G-o-n-z-a-l-e-z.

13 JUDGE STECKLER: Okay, are you in a room by yourself,
14 sir?

15 THE WITNESS: Yes.

16 JUDGE STECKLER: And have you discussed your
17 testimony with anybody in the last couple of weeks?

18 THE WITNESS: No.

19 JUDGE STECKLER: Have you -- do you have any
20 documents in front of you?

21 THE WITNESS: No, I do not.

22 JUDGE STECKLER: And the door is shut to your room?

23 THE WITNESS: Correct.

24 JUDGE STECKLER: Okay. Ms. LaRose, you may begin.

25 MS. LaROSE: Mr. Connolly will be questioning this

1 witness, Your Honor.

2 JUDGE STECKLER: Okay.

3 DIRECT EXAMINATION

4 Q BY MR. CONNOLLY: Okay, good morning, Antonio.

5 Is it okay if I call you Antonio?

6 A Yes, sir, it is.

7 Q Great. Thank you.

8 So, Antonio, who are you currently employed by?

9 A I am currently employed by John Neri Construction.

10 Q Okay, and about how long have you worked there?

11 A I have worked there about one year now.

12 Q Are you familiar with a company called Needham
13 Excavating, Inc.?

14 A Yes, I am.

15 Q Okay, and how are you familiar with them?

16 A I have previously worked for them in the past.

17 Q And when did you work for Needham Excavating?

18 A I worked for Needham Excavating in the spring of
19 2019.

20 Q Until about when?

21 A Until about August 2019.

22 Q Okay, do you think you can pinpoint a date that you
23 started working at Needham?

24 A Off the top of my head, no. I know it was around
25 April of 2019.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay, and when you worked at Needham, what was your
2 position?

3 A I was a laborer at Needham.

4 Q Okay. When you were hired at Needham, were you
5 drug-tested?

6 A No.

7 Q Okay, were you drug-tested ever during your
8 employment at Needham?

9 A Yes.

10 Q Okay, do you remember when that was?

11 A I believe it was around the month -- the month of
12 July.

13 Q Okay, of what year?

14 A Of 2019, sorry, yes. 2019.

15 Q Okay, and do you remember who -- who else was drug-
16 tested?

17 A It was two years ago, but from the top of my head,
18 I do remember Caleb -- Caleb, the other laborer was.

19 Q Was anybody else that you remember?

20 A No. From the top of my head, it could have been
21 all of the laborers, but I just don't recall at this
22 time since it was two years ago.

23 Q Okay, and did you pass that drug test?

24 A I believe I did. I mean, I didn't hear nothing
25 about it after.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay. Do you recall if any operators were drug-
2 tested?

3 A I do not recall that.

4 Q Okay.

5 A I wouldn't have knowledge of any of that. I never
6 heard anything about operators being drug-tested. I
7 only heard about the laborers getting drug-tested.

8 Q Okay, so are you -- are you familiar with a person
9 by the name of Chad Havill?

10 A Yes, I am.

11 Q Okay, and who is Chad?

12 A Chad was -- I had met him through the company of
13 Needham. We had worked together.

14 Q He was an operator, you said?

15 A Correct.

16 Q Okay. So, after you were drug-tested in July of
17 2019, did you talk to anyone from Needham about that?

18 A I can't remember the exact conversation, but I do
19 remember talking about it at work.

20 Q Okay. Did you speak with Chad about it?

21 MR. NIEW: Objection, relevance.

22 JUDGE STECKLER: Mr. Connolly?

23 MR. CONNOLLY: I'm getting at it. It is the
24 foundation for my next exhibit, Your Honor.

25 JUDGE STECKLER: Okay, go ahead.

1 THE WITNESS: I do -- I do recall texting Chad
2 about it.

3 Q BY MR. CONNOLLY: Okay, do you remember when you
4 texted Chad?

5 A I -- I don't know if it was the day of or the day
6 after, but I do remember text messaging him and asking
7 him what -- because the rumor was, we had got a drug
8 test because of him. So --

9 MR. NIEW: Objection; hearsay, foundation,
10 relevance.

11 JUDGE STECKLER: Okay, Mr. Connolly, can you clean
12 this up?

13 MR. CONNOLLY: Sure. Do I have your permission to
14 share a screen?

15 JUDGE STECKLER: Yes, go ahead.

16 [Long pause]

17 MR. CONNOLLY: This will be Union's Exhibit 89,
18 Your Honor.

19 **(Union's Exhibit 89, marked for identification.)**

20 Q BY MR. CONNOLLY: Okay, Antonio, can you see, there
21 -- there is a document on the screen?

22 A Yes.

23 Q Okay, do you recognize this document?

24 A Yes, I do.

25 Q And what do you recognize this as?

1 A As a text message that I had texted Chad.

2 Q Okay. And if you can look to about the bottom
3 third of this document, does that say the date of July
4 17th, 2019?

5 A Correct, it does.

6 Q Okay, and that gray bubble of text messages, who is
7 that texting?

8 A That is me texting Chad.

9 Q Okay, and what are you texting Chad?

10 A "We laborers just passed the drug test and since
11 you are trying to jeopardize our jobs, that is not cool
12 messing with people's money."

13 Q Okay. And the -- the blue text message below it,
14 who is that texting?

15 A That is Chad texting me back.

16 Q Okay, and he said, "What the fuck you talking
17 about?"

18 A Correct; that was it.

19 Q Okay. Did you text him anymore about the drug
20 testing after he -- after that initial text message on
21 July 17th, 2019?

22 A No, I did not.

23 Q Okay.

24 MR. CONNOLLY: Your Honor, at this time, I would
25 like to move for -- well, I'm sorry.

1 Q BY MR. CONNOLLY: Antonio, is this -- was this
2 screenshot taken on your phone?

3 A No, it was not.

4 Q Okay, and is that because the gray text messages
5 indicate that was a text message that was received to
6 the person that took the screen shot?

7 A Correct. I texted that.

8 Q Okay.

9 A In the blue is Chad.

10 Q Okay, thank you.

11 MR. CONNOLLY: Your Honor, at this time, I would
12 like to move for the admission of Union's Exhibit 89.

13 MR. NIEW: Objection, Your Honor. Foundation for
14 sure. We don't know -- there is no phone numbers on
15 there, and to relevance.

16 JUDGE STECKLER: Can you explain the relevance, Mr.
17 Connolly?

18 MR. CONNOLLY: Well, this relevance goes to impeach
19 the testimony of Mr. Nick Needham on April 27th of this
20 hearing, where he said he did not recall, nor was he
21 involved in any sort of drug tests of any employees, and
22 in particular, any laborers in July of 2019.

23 MR. NIEW: Continuing objection, Your Honor. This
24 does not talk about Nick Needham -- about what Nick
25 Needham knew. It is between two former employees, and

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 this should not be admitted.

2 JUDGE STECKLER: Okay, I am going to admit you will
3 have -- what is the exhibit number on this, Mr.
4 Connolly?

5 MR. CONNOLLY: Union's Exhibit 89, Your Honor.

6 JUDGE STECKLER: Union's Exhibit 89. It does not
7 mention Mr. Nick Needham, I will allow the testimony to
8 be entered, and we can develop testimony as needed.

9 MR. CONNOLLY: Thank you, Your Honor.

10 **(Union's Exhibit 89, received into evidence.)**

11 Q BY MR. CONNOLLY: And Antonio, just a couple more
12 follow-up questions.

13 When you worked at Needham, did you go out to
14 jobsites?

15 A Correct. You mean, was I working on jobsites?

16 Q Yes.

17 A Yes, I was.

18 Q Okay, when you were working on a jobsite, did you
19 ever see Needham employees smoking cigarettes?

20 A I did, correct.

21 Q Okay, do you remember anyone in particular from
22 Needham that smoked?

23 A I could name one of the laborers. I -- at the
24 time, I don't recall his real name. His name was "Joe-
25 Joe." I know Tracey smoked, I know of a guy named

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 "Pickle" that used to smoke cigarettes. I know of --
2 Kenny used to smoke cigarettes.

3 Q Okay, are --

4 A I used to smoke cigarettes at a time.

5 Q Okay. And when you say "Tracey," do you mean
6 Tracey Marshall?

7 A Correct.

8 Q And what was Tracey's position at Needham?

9 A Tracey's position, he was an operator.

10 Q Okay, and did you ever observe Tracey smoking in
11 his equipment?

12 A Yes, I have.

13 Q And how often would you say?

14 A Quite often. He was a frequent smoker, or chain-
15 smoker, as you could say.

16 Q Okay, and how often did you work with Tracey?

17 A From the time -- I can't remember, but I did work
18 with him more than I can count on my hands. I was
19 working with different operators every day.

20 Q Okay, and when you said an employee by the name of
21 "Pickle," is -- is that employee Ian Macumber?

22 A Yes.

23 MR. NIEW: Objection; leading.

24 JUDGE STECKLER: It is foundation. Go ahead.

25 Q BY MR. CONNOLLY: Okay, do you know -- and what was

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Pickle's position?

2 A Pickle's position was an operator, as well.

3 Q Okay, and do you recall Pickle smoking in the
4 equipment?

5 A I do.

6 Q Okay. Thank you.

7 MR. CONNOLLY: Your Honor, I have no further
8 questions for this witness.

9 JUDGE STECKLER: General Counsel?

10 MR. WILLIAMS: One second, Your Honor.

11 *[Long pause]*

12 MR. WILLIAMS: No questions, Your Honor.

13 Thank you.

14 JUDGE STECKLER: Okay, Mr. Niew?

15 CROSS EXAMINATION

16 Q BY MR. NIEW: Mr. Gonzalez, when you say you saw
17 people smoking on the jobsite, you never complained to
18 management; would that be correct?

19 A No. I never was aware that -- that I had to
20 complain to management, because, as well, like I said --

21 MR. NIEW: I would like that to be stricken. That
22 was supposed to be --

23 MS. LaROSE: I think it is responsive, Your Honor.

24 JUDGE STECKLER: Well, it was a "yes/no" question.

25 We will continue. Go ahead.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q BY MR. NIEW: Now when you said you saw people
2 smoking in the machine, do you have any photos of that?

3 A At the time, I -- I didn't look into it, but I can
4 go through my phone, but -- but to keep it simple, no.

5 Q And you didn't keep track of how many times you
6 observed somebody smoking; isn't that correct?

7 A No.

8 MR. NIEW: No further questions.

9 JUDGE STECKLER: Ms. LaRose -- Mr. Connolly, any
10 redirect?

11 [Long pause]

12 MR. CONNOLLY: Just a couple of follow-ups, Your
13 Honor.

14 JUDGE STECKLER: Okay.

15 REDIRECT EXAMINATION

16 Q BY MR. CONNOLLY: Antonio, did you ever work at a
17 QuikTrip job?

18 A Yes.

19 MR. NIEW: Objection; beyond the scope.

20 JUDGE STECKLER: I am going to allow it. Please
21 continue.

22 Q BY MR. CONNOLLY: Okay, and you said you worked
23 with Tracey Marshall quite a few times, right?

24 A Correct.

25 Q Do you recall any instances where Tracey did not

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 show up to work?

2 A Yes, I remember one day he did not show up.

3 Q Okay, can you -- how do you know that he did not
4 show up?

5 A Everybody was talking about it at work that day.

6 Q Okay, who, in particular?

7 A I would say --

8 MR. NIEW: Hearsay.

9 JUDGE STECKLER: Did you hear those conversations
10 yourself, Mr. Gonzalez?

11 THE WITNESS: What conversations, ma'am? I'm
12 sorry?

13 JUDGE STECKLER: About why Tracey Marshall didn't
14 show up?

15 THE WITNESS: No -- oh, yes, I actually did.

16 JUDGE STECKLER: Okay, can you repeat the question
17 then, Mr. Connolly?

18 MR. CONNOLLY: Mr. Molinaro, can you go back --

19 THE COURT REPORTER: You wouldn't be able to hear
20 it, but I think you were talking about who --

21 MR. CONNOLLY: Oh, yes, in particular, who --

22 THE COURT REPORTER: -- was talking about --

23 MR. CONNOLLY: Thank you. Okay.

24 Q BY MR. CONNOLLY: Okay, from what you saw or what
25 you heard, did anyone try reaching out to Tracey?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yes.

2 Q Okay, and who did -- who did you see or hear trying
3 to reach Tracey?

4 A I heard -- at the time, Curt was trying to reach
5 out to him, but Tracey was not responding to anybody.

6 Q Okay, and when you say -- you said Curt?

7 A Yes.

8 Q Curt -- is that Curt McKinley?

9 A Yes, it is.

10 Q Okay, and who was Curt McKinley?

11 A Curt McKinley, at the time was -- I guess he was a
12 foreman. He was the person that I reported to.

13 Q And he works for Needham Excavating?

14 A Yes.

15 Q Okay. And from what you recall, did Tracey ever
16 show up to work that day?

17 A No. From what I can recall, no.

18 MR. NIEW: Objection to the relevance of this whole
19 line of questioning.

20 MR. CONNOLLY: I have no further questions, Your
21 Honor.

22 JUDGE STECKLER: Well, that doesn't answer the
23 question of what the relevance is.

24 MR. CONNOLLY: Well, this relevance goes to impeach
25 other witnesses' testimony at this hearing.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: About?

2 MR. CONNOLLY: About whether Tracey Marshall had,
3 in fact, called off work that day, or if he had shown up
4 to a jobsite.

5 MS. LaROSE: And also, Your Honor, the Employer has
6 taken -- has made a relatively big fuss about safety
7 issues, and I think we have established that there are
8 some problems here. The Employer, when questioned about
9 whether it had a drug-testing program with respect to
10 the -- the Department of Transportation regulations
11 said, "No," or it didn't know. The Employer's involved
12 --

13 MR. NIEW: Your Honor. Your Honor...

14 JUDGE STECKLER: One moment, Mr. Niew.

15 MS. LaROSE: The Employer's representative was
16 involved in day to day operations is making the
17 representation that they don't have a drug-testing
18 program, but then we have evidence that somebody has
19 been drug-tested.

20 He is also, that same witness, has testified that
21 this Tracey Marshall missed work on the occasion in
22 question because he called in. This witness is telling
23 us it is not because he called in. Curt McKinley had to
24 track this individual down.

25 I think this is relevant to impeachment and

1 relevance to larger issues that the Company is pressing
2 about safety and its supposed concern about safety.

3 JUDGE STECKLER: Okay, Mr. Niew, I am sustaining
4 your objection, but the answers are already on the
5 record.

6 MR. NIEW: Your Honor, I have another objection.

7 I have never been in a trial where two different
8 attorneys are allowed to be speaking with respect to one
9 witness. Shouldn't they be picking who is going to be
10 asking the questions, who is going to be responding to
11 Your Honor and to objections?

12 JUDGE STECKLER: Well, I usually don't allow -- I
13 understand your objection, Mr. Niew, and duly noted, Ms.
14 LaRose, if you could try to keep it to one person.

15 MS. LaROSE: Of course, Your Honor. Yes.

16 JUDGE STECKLER: As a young attorney, I was also
17 told not to do that anymore.

18 So, any additional questions from the General
19 Counsel?

20 MR. WILLIAMS: No, Your Honor.

21 JUDGE STECKLER: Mr. Niew, any questions from you?

22 MR. NIEW: No further questions.

23 JUDGE STECKLER: Mr. Gonzalez, you are about to be
24 released as a witness. Please do not discuss your
25 testimony with anyone until after this hearing is over.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Thank you for your time today.

2 THE WITNESS: Thank you so much.

3 *[Witness excused]*

4 MS. LaROSE: Your Honor, can we have just a minute
5 so we can show Mr. Gonzalez out?

6 JUDGE STECKLER: Yes, please.

7 And do you have another witness coming in, or
8 General Counsel?

9 MR. WILLIAMS: Yes, General Counsel has a witness,
10 a couple witness after Mr. Gonzalez.

11 JUDGE STECKLER: All right, does the Union also
12 have witnesses?

13 MS. LaROSE: Yes, Your Honor.

14 JUDGE STECKLER: Are they coming before or after
15 General Counsel's?

16 MS. LaROSE: I think we are going to do our next
17 witness after General Counsel, Your Honor. Apparently,
18 just as an efficiency --

19 JUDGE STECKLER: Okay, who's on first --

20 MS. LaROSE: Yes.

21 JUDGE STECKLER: Okay, let's go off the record
22 while General Counsel gets his witness.

23 *[Off the record]*

24 JUDGE STECKLER: Mr. Molinaro, are we on?

25 THE COURT REPORTER: Yes.

1 JUDGE STECKLER: Thank you.

2 All right, General Counsel may call his witness,
3 his rebuttal witness.

4 MR. WILLIAMS: At this time, Your Honor, General
5 Counsel recalls Adam VanOpDorp.

6 JUDGE STECKLER: Mr. VanOpDorp, you are still under
7 oath, as you recall.

8 Have you discussed your testimony with anyone since
9 the last time you were here?

10 THE WITNESS: No.

11 JUDGE STECKLER: All right.

12 Are you in a room by yourself?

13 THE WITNESS: Yes.

14 JUDGE STECKLER: Is the door open or shut, please?

15 THE WITNESS: Shut.

16 JUDGE STECKLER: Do you have any papers in front of
17 you?

18 THE WITNESS: No.

19 JUDGE STECKLER: All right, General Counsel, you
20 may proceed.

21 (Whereupon,

22 **ADAM VANOPDORP**

23 having been previously sworn/affirmed, was recalled as a
24 witness herein, and was further examined and testified via
25 video-conference, as follows:)

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 DIRECT EXAMINATION

2 Q BY MR. WILLIAMS: Do you remember testifying that
3 you were involved in a meeting where you were informed
4 by members of management that you were being terminated?

5 A Yes.

6 Q Do you remember when that meeting was?

7 A July 8th, 2019.

8 Q And who was present at that meeting?

9 A Nick Needham and Curt McKinley.

10 Q Okay, and during that meeting --

11 JUDGE STECKLER: Just a second, Mr. Williams.

12 Ms. Spielberg advises me that Ms. LaRose is not
13 present. Is that --

14 MR. CONNOLLY: She said go ahead.

15 JUDGE STECKLER: All right, thank you.

16 Go ahead, Mr. Williams.

17 MR. WILLIAMS: Thank you.

18 JUDGE STECKLER: So we are talking about the
19 termination meeting?

20 MR. WILLIAMS: Yes.

21 JUDGE STECKLER: Thank you.

22 Q BY MR. WILLIAMS: And during that meeting, you were
23 told, I guess in part, that you were being discharged
24 for falsifying a timecard?

25 A Yes.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q During that meeting, did you tell Nick Needham or
2 Curt McKinley, at any point, that if they were checking
3 your timecard, they should be checking other people's
4 timecards, because you weren't the only one cheating on
5 your timecard?

6 A I never said "cheating," so, no.

7 Q Did you ever tell any member of management that if
8 they were checking your timecard they should be checking
9 other people's timecards, because you weren't the only
10 one cheating on your timecard?

11 A No.

12 Q And during your employment at Needham Excavating,
13 Inc., were you ever told by any member of management
14 that you were a lead man on a job?

15 A No.

16 Q And during your employment at Needham Excavating,
17 Inc., did any member of management ever tell you that
18 would be discharged for using your cellphone?

19 A No.

20 MR. WILLIAMS: I have no further questions, Your
21 Honor.

22 JUDGE STECKLER: Questions from the Union?

23 MS. LaROSE: No, Your Honor.

24 JUDGE STECKLER: Mr. Niew?

25 MR. NIEW: No questions.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Mr. VanOpDorp, you have heard this
2 before, but you are going to hear it again...

3 Please do not discuss your testimony with anyone
4 until after the hearing is over.

5 Thank you for coming in this morning.

6 THE WITNESS: Thank you.

7 *[Witness excused]*

8 JUDGE STECKLER: We will go off the record while
9 General Counsel obtains his next witness.

10 *[Off the record]*

11 THE COURT REPORTER: Okay, Judge, we are on.

12 JUDGE STECKLER: Okay, General Counsel may call its
13 first witness.

14 MR. WILLIAMS: At this time, Your Honor, General
15 Counsel would like to recall Chad Havill to the stand.

16 JUDGE STECKLER: Good morning, Mr. Havill.

17 You are still under oath, as before. Do you recall
18 that?

19 THE WITNESS: Yes.

20 (Whereupon,

21 **CHAD HAVILL**

22 having been previously sworn/affirmed, was recalled as a
23 witness herein, and was further examined and testified via
24 video-conference, as follows:)

25 JUDGE STECKLER: Are you in a room by yourself,

1 sir?

2 THE WITNESS: Yes.

3 JUDGE STECKLER: Is the door open or shut?

4 THE WITNESS: Shut.

5 JUDGE STECKLER: Do you have any papers in front of
6 you?

7 THE WITNESS: Nope.

8 JUDGE STECKLER: Did you discuss your testimony
9 with anyone since the last time you met with us?

10 THE WITNESS: No.

11 JUDGE STECKLER: Okay, Mr. Williams, you may
12 proceed.

13 MR. WILLIAMS: Yes, thank you.

14 DIRECT EXAMINATION

15 Q BY MR. WILLIAMS: Mr. Havill, in your previous
16 testimony, do you recall testifying about working on the
17 Dan Dolen's Townhomes jobsite on July 1st, 2019?

18 A Yes.

19 Q Do you know when you arrived at that jobsite that
20 day?

21 A 6:30 a.m.

22 Q Okay, and when you arrived, was Adam VanOpDorp
23 already present at the jobsite?

24 A Yes.

25 Q And when did you leave the jobsite?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A 4:30 p.m.

2 Q And when you left, was Adam VanOpDorp still on the
3 jobsite?

4 A Yes.

5 Q And where did you go after you left the Dan Dolen's
6 jobsite on July 1st, 2019?

7 A The shop in Walcott.

8 Q When you say the shop, Needham Excavating, Inc.'s
9 shop?

10 MR. WRIGHT: Your Honor, I would object. This has
11 all been asked and answered by this witness, unless
12 there is something being offered here.

13 JUDGE STECKLER: Is this something -- are you
14 getting to it?

15 MR. WILLIAMS: I am getting to it.

16 JUDGE STECKLER: Okay.

17 Q BY MR. WILLIAMS: Let me repeat the question.

18 Where did you go when you left the Dan Dolen's
19 Townhomes jobsite?

20 A Needham's shop in Walcott.

21 Q Okay. And at that time, was Adam VanOpDorp in the
22 shop with you?

23 A No.

24 Q Did you ever see Adam VanOpDorp at Needham
25 Excavating, Inc.'s shop on July the 1st, 2019, after you

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 left the jobsite?

2 A No.

3 JUDGE STECKLER: How long were you there, Mr.

4 Havill, at the shop?

5 THE WITNESS: Not very long, twenty minutes at the
6 max.

7 JUDGE STECKLER: And about what time did you get
8 there?

9 THE WITNESS: Probably somewhere in the
10 neighborhood of ten to 5:00 -- ten after 5:00.

11 JUDGE STECKLER: You may continue, Mr. Williams.

12 MR. WILLIAMS: Okay.

13 Q BY MR. WILLIAMS: Mr. Havill, did you ever tell Joe
14 Needham that Adam VanOpDorp left the Dan Dolen's jobsite
15 early on July 1st, 2019?

16 A No.

17 Q Did you ever tell Nick Needham that Adam VanOpDorp
18 left the Dan Dolen's jobsite early on July 1st, 2019?

19 A No.

20 Q Did you ever tell Dan Needham that Adam VanOpDorp
21 left the Dan Dolen's jobsite early on July 1st, 2019?

22 A No.

23 Q Did you ever tell Curt McKinley that Adam VanOpDorp
24 left the Dan Dolen's jobsite early on July 1st, 2019?

25 A No.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Did you ever tell any member of management that
2 Adam VanOpDorp left the Dan Dolen's jobsite early on
3 July 1st, 2019?

4 A No.

5 Q And do you ever recall having to start any piece of
6 equipment for Brett Gripp while you were employed --
7 while he was employed at Needham Excavating, Inc.?

8 A No.

9 Q Okay. Now, directing your attention to July the
10 8th, 2019, do you recall what, if anything, happened on
11 that day?

12 MR. WRIGHT: Object; asked and answered the last
13 time around with this witness, Your Honor.

14 JUDGE STECKLER: It goes to foundation.

15 MR. WILLIAMS: It is also rebuttal. It goes to
16 rebuttal of previous testimony by management.

17 JUDGE STECKLER: It is foundation for that. Go
18 ahead.

19 THE WITNESS: Can you repeat that, please?

20 Q BY MR. WILLIAMS: Directing your attention to July
21 8th, 2019, what, if anything, happened on that date that
22 you recall?

23 A I had a conversation with Joe Needham. He had
24 asked me what time Adam had left the jobsite at Dan
25 Dolen's on July 1, and I told him that he was still

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 there when I left. I didn't know exactly what time he
2 had left.

3 I kind of asked why, and he said he had a plan, but
4 he wasn't able to reveal his cards right now, and I
5 didn't quite understand it, I assumed he was looking at
6 a reason to get rid of Adam with that statement.

7 JUDGE STECKLER: Well, that was speculative part of
8 it, so -- just to be clear for the record.

9 Q BY MR. WILLIAMS: And after you spoke to Joe
10 Needham, did you have a discussion with Adam VanOpDorp
11 on that day?

12 A Yes.

13 Q And what did he tell you?

14 A That he had been terminated.

15 Q Okay, and after you had a discussion with Adam
16 VanOpDorp, when he told you that he had been terminated,
17 did you have any further communication with Joe Needham?

18 A No.

19 Q Did you ever send him a text message about your
20 discussion with Adam --

21 A Yeah, I sent him a text. It said, "I basically
22 understand your question from this morning."

23 Q And what did you mean by that text?

24 A Meaning that he was looking -- looking for info on
25 Adam to -- to terminate him.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay.

2 MR. WILLIAMS: Your Honor, I have no further
3 questions.

4 JUDGE STECKLER: Ms. LaRose?

5 MS. LaROSE: *[Inaudible - muted]*

6 JUDGE STECKLER: Ms. LaRose, you are muted. There
7 we go.

8 MS. LaROSE: No further questions, Your Honor.

9 MR. WRIGHT: No questions, Your Honor.

10 JUDGE STECKLER: Mr. Havill, you are about to be
11 excused as a witness again. Please do not discuss your
12 testimony with anyone until after this hearing is over.

13 Thank you for coming in this morning.

14 THE WITNESS: All right.

15 *[Witness excused]*

16 JUDGE STECKLER: General Counsel, do you have
17 another witness?

18 MR. WILLIAMS: I do, Your Honor.

19 JUDGE STECKLER: Okay, let's go off the record
20 while we make that change, please.

21 *[Off the record]*

22 THE COURT REPORTER: Okay, we are on.

23 JUDGE STECKLER: Thank you, Mr. Molinaro.

24 We are back on the record.

25 General Counsel may call its next witness.

1 MR. WILLIAMS: At this time, Your Honor, General
2 Counsel would like to call Jason Fulks to the stand.

3 JUDGE STECKLER: Mr. Fulks, did you testify for us
4 before?

5 THE WITNESS: No, ma'am.

6 JUDGE STECKLER: I didn't think so.

7 Please raise your right hand.

8 (Whereupon,

9 **JASON FULKS**

10 having been sworn/affirmed, was called as a witness
11 herein, and was examined and testified via video-
12 conference, as follows:)

13 JUDGE STECKLER: Thank you.

14 Please state your name and spell it for the record.

15 THE WITNESS: Jason Fulks; J-a-s-o-n, F-u-l-k-s.

16 JUDGE STECKLER: Mr. Fulks, have you discussed your
17 testimony with anybody over the last couple of weeks?

18 THE WITNESS: No, ma'am.

19 JUDGE STECKLER: All right, do you have any papers
20 or documents in front of you, sir?

21 THE WITNESS: I do not.

22 JUDGE STECKLER: Are you in a room by yourself?

23 THE WITNESS: I am.

24 JUDGE STECKLER: Is the door open or shut?

25 THE WITNESS: Shut.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Thank you, sir.

2 All right, Mr. Williams, your witness then.

3 DIRECT EXAMINATION

4 Q BY MR. WILLIAMS: Yes. Mr. Fulks, are you
5 currently employed?

6 A I am.

7 Q And by whom?

8 A Tri-City Construction.

9 Q And how long have you worked there?

10 A Two months.

11 Q Okay. Prior to working for Tri-City Construction,
12 were you ever employed with Needham Excavating, Inc.?

13 A Yes, sir.

14 Q And when were you employed there?

15 A May 2015 until February 2019.

16 Q And what was your position?

17 A Pipe setter/laborer.

18 Q And what were your duties as pipe setter/laborer?

19 A Installing sanitary and water and storm sewer pipe.

20 Q Okay. And while you were employed at Needham
21 Excavating, Inc., did you work with any heavy equipment
22 operators?

23 A Yes, I did.

24 Q Okay. And from your working with other heavy
25 equipment operators, what are their primary duties on

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 the jobsite?

2 A To run the equipment per my instruction.

3 Q Okay. And so, is it their responsibility to make
4 sure -- whose responsibility is it to make sure that the
5 pipe is laid correctly?

6 A That would be mine.

7 Q And whose responsibility is it to make sure the
8 pipe is installed correctly?

9 A Mine, as well.

10 Q And why wouldn't it be the heavy equipment
11 operator?

12 A It is not his responsibility.

13 Q Okay, why wouldn't it be his responsibility?

14 A Because to run the equipment, that is what their
15 job is, is to run the equipment, and it would be my job
16 to make sure that all of the pipe and everything was
17 installed correctly.

18 Q Can you explain what procedures, what processes
19 goes into making sure that pipe is installed correctly?

20 A Using the proper laser, lasers, that we use, having
21 the, I don't know, just the basic -- I instruct the
22 operators on how much to dig out and where to dig, and
23 at what grade to dig.

24 Q Okay, you said lasers? You use lasers? What kind
25 of laser do you use?

1 A We use a pipe laser or a rotary laser, or the GPS.

2 Q Now, are you familiar with Adam VanOpDorp?

3 A I am.

4 Q And who is he?

5 A He is a heavy equipment operator.

6 Q Okay. And did you happen to work with Mr. Adam

7 VanOpDorp on the 18th Street jobsite in 2018?

8 A I did.

9 Q And did you lay pipe there during that project?

10 A I did.

11 Q And whose responsibility was it to lay that pipe

12 correctly?

13 A That would have been mine.

14 Q And did you also work with Mr. Adam VanOpDorp at

15 the 11th Street project --

16 A I did.

17 Q -- in 2018?

18 A I did.

19 Q And was pipe laid during that project?

20 A Yes, sir.

21 Q And did you lay that pipe?

22 A Yes, I did.

23 Q And whose responsibility was it to make sure that

24 that pipe was laid correctly?

25 A Mine.

1 Q Going back to the 18th Street project in 2018, was
2 there an issue with a manhole that you can recall?

3 A Yes, there was.

4 Q And what was the issue with the manhole?

5 A It was pushed over four inches out of level due to
6 the dumping the dump trucks of sand against it.

7 Q Okay. And so, who caused that? How was that
8 caused?

9 A That was caused by Curt McKinley. He backed in
10 several dump trucks and just started -- backed on the
11 manhole without it being properly done. He just backed
12 them in off of the road and dumped them against the one
13 side of the manhole and it pushed it over four inches.

14 Q Okay. Do you know if that problem ever got
15 corrected?

16 A No, it did not.

17 Q So, when you worked with Adam VanOpDorp, was he
18 ever -- did you ever understand him to be the lead man
19 on the project?

20 A No, sir.

21 Q Were you ever told by any member of management that
22 Adam VanOpDorp was the lead man on the project that you
23 worked with him?

24 A No.

25 Q Were you ever told by any member of management that

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 you were responsible for all pipe work that you
2 installed on any jobsite?

3 A Yes.

4 Q And who told you that?

5 A Joe Needham told me that I was in charge of all of
6 the pipework; that I was responsible for the work that I
7 did.

8 Q And when was that?

9 A Soon after I was hired.

10 Q Okay. And while you were employed at Needham
11 Excavating, Inc., did you ever see any operators smoking
12 inside pieces of equipment?

13 A Yes, sir.

14 Q And how often did you see operators smoking inside
15 pieces of equipment?

16 A Pretty much whenever they needed to have a
17 cigarette. I seen operators, truck drivers; smoking was
18 allowed in their shop.

19 Q Okay. Do you know any people in particular?

20 A Yes, Tracey Marshall, Aaron McCubbin [*Phonetic*],
21 Amber Nielson, Nelson; I am not sure what her name is,
22 but Amber, she smoked in the dump trucks.

23 Q And to the best of your knowledge, were any of
24 these people disciplined for smoking inside pieces of
25 equipment?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A No.

2 [Long pause]

3 MR. WILLIAMS: I have no further questions, Your
4 Honor.

5 JUDGE STECKLER: Mr. Fulks, when did you say you
6 left Needham?

7 THE WITNESS: I believe it was February of 2019.

8 JUDGE STECKLER: And were -- under what
9 circumstances did you leave?

10 THE WITNESS: I left due to refusing to sign our
11 labor contract. I was told --

12 JUDGE STECKLER: In February of 2019?

13 THE WITNESS: Yes, ma'am.

14 JUDGE STECKLER: Okay, Ms. LaRose?

15 MS. LaROSE: Thank you.

16 DIRECT EXAMINATION

17 Q BY MS. LaROSE: Mr. Fulks, did you have a Plumbers'
18 license at the plant where you were working at Needham?

19 A Yes, ma'am.

20 Q And are there continuing education requirements
21 associated with that license?

22 A Yes, there is.

23 Q Okay, and who paid -- who paid for those continuing
24 education requirements?

25 A Needham Excavating.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q When you were doing work with Adam and other
2 operators, who was in the hole?

3 A I was.

4 Q And earlier you mentioned an Aaron McCubbin; could
5 that have been Ian Macumber?

6 A Yes. Yes, that is who I was referring to.

7 MS. LaROSE: Those are all of my questions, Your
8 Honor.

9 JUDGE STECKLER: Okay, Mr. Niew?

10 MR. WRIGHT: Your Honor, if I could have just two
11 minutes --

12 JUDGE STECKLER: Oh, I'm sorry, Mr. Wright.

13 We will go off the record for a couple minutes
14 here.

15 MR. WRIGHT: Thank you.

16 *[Off the record]*

17 THE COURT REPORTER: Okay, we are on.

18 JUDGE STECKLER: Mr. Wright, your witness.

19 CROSS EXAMINATION

20 Q BY MR. WRIGHT: Mr. Fulks, isn't it true you took a
21 pay reduction during the course of your employment with
22 Needham Excavating, precisely because you did not want
23 the responsibilities associated with being a lead man on
24 the job, or having ultimate authority or responsibility
25 on a particular job?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

- 1 A No, that is not correct.
- 2 Q So you never took a pay reduction at Needham?
- 3 MS. LaROSE: Objection, asked and answered.
- 4 Q BY MR. WRIGHT: For any reason; did you ever take a
- 5 pay reduction for any reason at Needham?
- 6 A My pay was reduced.
- 7 Q Why was that?
- 8 A Curt McKinley said I did not perform.
- 9 Q In what regard?
- 10 A That was the answer I was given, that I was not --
- 11 that I did not perform as well as what they thought, and
- 12 that the enclosed trailer that I was letting Needham
- 13 use, they bought a trailer so they no longer needed my
- 14 trailer, so because of those two things, my pay reduced
- 15 by \$1.50.
- 16 Q You have never been an operator for Needham, have
- 17 you?
- 18 A No, sir.
- 19 Q So you are not aware as to what responsibilities
- 20 have ever been given to operators by Needham management,
- 21 specifically, are you?
- 22 A No.
- 23 Q You wouldn't be a party to those discussions,
- 24 right?
- 25 A That's correct.

1 Q Was your last job at Needham the Portillo's job?

2 A Yes.

3 Q Isn't it true that on or about your last day of
4 employment you defecated in a Needham bucket of tools?

5 MR. WILLIAMS: Objection, Your Honor. Beyond the
6 scope of rebuttal, and relevancy.

7 MR. WRIGHT: Your Honor, it is impeachment of this
8 witness, that goes to the type of individual we are
9 talking about here. He obviously has an ax to grind
10 with Needham. I don't know what other reason would be
11 to do that.

12 JUDGE STECKLER: I am going to allow it. Go ahead,
13 Mr. Fulks. Can you recall doing so?

14 THE WITNESS: Yes, ma'am.

15 JUDGE STECKLER: Why did you do it?

16 THE WITNESS: The office was occupied, and I felt I
17 had to go and I did, and I also felt though that I was
18 being defecated on by Needham Excavating due to having
19 to lose my job.

20 JUDGE STECKLER: What do you mean having to lose
21 your job?

22 THE WITNESS: Being not a union member, I cannot
23 work for somebody that does not pay our benefits, and
24 isn't part of our contract, and I was told by Needham
25 Excavating that they would not sign our contract unless

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 our union came to their demands, which our union can't
2 do. So, I --

3 JUDGE STECKLER: Who told you -- who told you that,
4 about the contract?

5 THE WITNESS: Curt McKinley. I asked him
6 specifically if he would sign our contract and he said
7 that they would not. So I can't work for an employer
8 that doesn't pay into the benefits.

9 JUDGE STECKLER: Mr. Wright, you may continue.

10 Q BY MR. WRIGHT: Mr. Fulks, you clearly were not
11 happy with Needham Excavating over their labor situation
12 with your union, correct?

13 A No, I was not happy.

14 Q Okay, and you were not fired from Needham, were
15 you?

16 A No, I quit.

17 Q Okay.

18 MR. WRIGHT: That's all I have, Your Honor.

19 JUDGE STECKLER: Mr. Williams?

20 MR. WILLIAMS: No further questions, Your Honor.

21 JUDGE STECKLER: Ms. LaRose?

22 REDIRECT EXAMINATION

23 Q BY MS. LaROSE: Mr. Fulks, you said that Mr.
24 Needham, Nick Needham, told you that they would not sign
25 the Laborers' contract; was that your testimony?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. WRIGHT: Objection, I believe that
2 mischaracterizes the testimony.

3 JUDGE STECKLER: What did he tell you? Let's
4 clarify that, Mr. Fulks.

5 THE WITNESS: Curt McKinley told me that Needham
6 Excavating would not sign our contract unless our union
7 conceded, you know, went with their demands.

8 Q BY MS. LaROSE: Was that consistent with what other
9 members of management had told you leading up to
10 negotiations?

11 A I had a meeting with Curt and Nick and they both
12 said that they weren't going to sign the contract due to
13 -- they didn't want to pay in to our our benefits. They
14 wanted us to have a separate package just for them.

15 Q Had management told you something earlier though
16 that suggested that they might sign the agreement?

17 MR. WRIGHT: Objection, leading.

18 JUDGE STECKLER: What, if any, other discussions
19 did you have about that, Mr. Fulks, if you can recall?

20 THE WITNESS: I believe that Nick Needham met some
21 of our fellow laborers at our Union -- at my Union Hall,
22 and he told us that they were not going to leave the
23 Union, that they couldn't leave the Union, or they would
24 lose their customers, and that this was just all of the
25 -- so that they could ask for the different arrangement

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 with their contract.

2 JUDGE STECKLER: Ms. LaRose, can you clean that up
3 a bit, please?

4 MS. LaROSE: Sure.

5 Q BY MS. LaROSE: So, it was your understanding on
6 the basis of that conversation, that the Company was
7 going to negotiate an agreement with the laborers; is
8 that right?

9 A Yes.

10 Q Okay. And so, what -- did you hear the
11 conversation that Mr. Needham had at the Hall, and what
12 you heard from Curt McKinley to be consistent?

13 MR. WRIGHT: Objection. I think I need
14 clarification. Has there been any testimony that Mr.
15 Fulks was actually at that meeting at the Hall?

16 JUDGE STECKLER: That's a good question.

17 Mr. Fulks, were you present at the Hall for
18 negotiations -- for potential negotiations?

19 THE WITNESS: Yes, ma'am, I was at the Union Hall.

20 JUDGE STECKLER: When did this take place?

21 THE WITNESS: It would have took place in 2018. I
22 am not sure of the month.

23 JUDGE STECKLER: And who was present?

24 THE WITNESS: Our laborers that worked at Needham
25 Excavating and our Union representative, Brad Long.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Was this before or after the Union
2 had been decertified?

3 THE WITNESS: This would have been after the
4 decertification from 150.

5 JUDGE STECKLER: Ms. LaRose, you may continue.

6 MS. LaROSE: Okay. Your Honor, I think the
7 material I helped to elicit from this witness on
8 redirect has been established, so I don't have any
9 further questions for him.

10 JUDGE STECKLER: Okay, Mr. Wright?

11 MR. WRIGHT: No questions.

12 JUDGE STECKLER: Mr. Williams, anything else?

13 MR. WILLIAMS: No questions, Your Honor.

14 JUDGE STECKLER: Okay. You are about to be
15 released, Mr. Fulks. Please do not discuss your
16 testimony with anyone until after this hearing is over.

17 Thank you for coming in this morning.

18 THE WITNESS: Thank you.

19 *[Witness excused]*

20 JUDGE STECKLER: Does General Counsel have another
21 witness?

22 MR. WILLIAMS: No, Your Honor.

23 JUDGE STECKLER: Does the Union have another
24 witness?

25 MS. LaROSE: We do, Your Honor.

1 If you could give us just a minute to get that
2 witness situated?

3 JUDGE STECKLER: Okay, let's go off the record,
4 please.

5 *[Off the record]*

6 JUDGE STECKLER: Let's go on the record, please.

7 THE COURT REPORTER: We are on, Your Honor.

8 JUDGE STECKLER: Thank you, Mr. Molinaro.

9 General Counsel -- Union may call her next witness.

10 MS. LaROSE: Okay, Your Honor, we call Brett Gripp.

11 JUDGE STECKLER: Mr. Gripp, since you have
12 testified previously, just a reminder that you are still
13 under oath, yes?

14 THE WITNESS: Yes.

15 (Whereupon,

16 BRETT GRIPP

17 having been previously sworn/affirmed, was recalled as a
18 witness herein, and was further examined and testified via
19 video-conference, as follows:)

20 JUDGE STECKLER: Are you in a room by yourself?

21 THE WITNESS: Yes.

22 JUDGE STECKLER: Is the door open or shut?

23 THE WITNESS: It's shut.

24 JUDGE STECKLER: Do you have any documents in front
25 of you?

1 THE WITNESS: No, ma'am.

2 JUDGE STECKLER: You may begin, Ms. LaRose.

3 MS. LaROSE: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 Q BY MS. LaROSE: Okay, Mr. Gripp, I am going to try
6 to go over with you the number of times while you were
7 on the job that you performed heavy equipment operation,
8 and I am going to be doing that, in part, by reference
9 to your timecards with Needham. Do you understand?

10 MR. NIEW: Objection; that's not a question.

11 JUDGE STECKLER: She's about to get to one.

12 MS. LaROSE: Okay, Mr. Connolly, could you please
13 put on the screen for us, Bates No. N2593?

14 JUDGE STECKLER: And what exhibit number is this,
15 Ms. LaRose?

16 MS. LaROSE: That is going to be in Union -- I'm
17 sorry, Your Honor, just give me a second.

18 This is 65.

19 JUDGE STECKLER: Okay. Go ahead please with Share
20 Screen.

21 MS. LaROSE: And Your Honor, if your [*Voice*
22 *transmission garbled*]

23 Okay, here we go.

24 Q BY MS. LaROSE: Okay, Mr. Gripp, can you see the
25 timecard which is Bates No. N2593?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yes.

2 Q I am going to direct your attention to the first
3 entry which is for November 5th, 2018, right?

4 A Yes.

5 Q It says in the "Description" area, "Move 135 from
6 PVHS."

7 Could you please tell us what that means?

8 A I was instructed to go to Pleasant Valley High
9 School and pick up the 135 excavator and move it to a
10 different jobsite that day.

11 Q Okay, and is this -- just to clarify for the
12 record, is this timecard in your handwriting?

13 A Yes.

14 Q Did you operate any heavy equipment that day?

15 A Yes, I did.

16 Q What did you do?

17 A So when I arrived, the job was -- there was still
18 some stuff going on, and Dan Needham instructed me to --
19 to use the 135 to load Amber Nielson's dump truck at the
20 time with dirt, so they could backfill around islands
21 and stuff in the parking lot they were building.

22 Q Okay, thank you.

23 And did you do that?

24 A Yes.

25 Q Okay.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MS. LaROSE: Jim, could you please take us to the
2 card marked N2606? It may not be in this group.

3 Yes. Yes, it is in here.

4 [Long pause]

5 Q BY MS. LaROSE: Mr. Gripp, could you please take a
6 look at this timecard for us that is marked as N2606?

7 A Okay.

8 Q And with reference to the date March 27th, 2019, it
9 says, in one entry, "Black dirt from Honda - Gordon
10 Vantines."

11 Do you see that entry?

12 A Yes.

13 Q Did you run heavy equipment that day?

14 A Yes, I did.

15 Q First of all, can you explain to us what the
16 description, "Black dirt from Honda - Gordon Vantines"
17 means?

18 A I loaded black dirt off the dirt pile at Honda, and
19 I loaded myself, and took it to Gordon Vantines so they
20 could backfill around the building.

21 Q When you say "loaded myself," you didn't black dirt
22 into your mouth, right?

23 A No, I loaded -- I loaded a dump truck with the
24 excavator.

25 Q Yes, thank you. I'm sorry about the bad humor.

1 Okay, thank you.

2 Same timecard, March 28, 2019, there is an entry
3 for that date that says, "Load millings for Lowell
4 Lund."

5 A Yes.

6 Q Do you see that entry?

7 A Yes.

8 Q What is "Load millings - Lowell Lund" mean?

9 A I was done pretty early that day on the job, so I
10 went into the shop to ask if there was anything I could
11 do, and Joe Needham says -- he was standing there with
12 his friend, Lowell Lund, and Joe says, "Do you want to
13 go load millings into the dump truck and take it to
14 Lowell's house for me?"

15 I said, "Yes, no problem."

16 So I went to Honda and I loaded asphalt millings
17 with the 310 combo hoe into a dump truck, and I was
18 instructed to take it to Lowell's house so that he could
19 fill in holes in his driveway.

20 Q Okay. And you said millings, "m-i-l-l-i-n-g-s."

21 A Yes, that is asphalt millings. That is when they
22 grind the road up -- they grind it up into like a gravel
23 material.

24 Q And what is Honda? What do you mean by that?

25 A Honda is a yard where they have a dirt pile and a

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 pile of millings, and where we dump dirt and stuff when
2 we are getting rid of dirt from jobsites.

3 Q And "Combo Hoe," is that short for combination
4 backhoe?

5 A Yes.

6 Q Directing your attention, same timecard, to March
7 29, 2019. There's an entry that says, "Finish loading"
8 -- it looks like "stang."

9 A Stang, yes.

10 Q Can you explain to us what you meant by that?

11 A Lowell needed some more millings, so I loaded Stang
12 with the same combination hoe at the same site, Honda,
13 so he could deliver some more to Lowell.

14 Q Okay. You said you used the same combo hoe?

15 A Yes.

16 MS. LaROSE: Now, go to the timecard N2608, for the
17 record.

18 Q BY MS. LaROSE: Mr. Gripp, I see on this timecard,
19 N2608, an entry that says, "Dave Meir Maysville Farm."

20 Could you please explain to us what you meant by
21 that entry?

22 A This day I went to the Dave Meir farm with the
23 semi, which is 208, with a tub, to help Brandon Harvey
24 tear down a house.

25 Q And did you perform any heavy equipment operation

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 on that day?

2 A Yes, we were to a point where the tub wasn't needed
3 at the time, so Brandon Harvey asked me about helping
4 tear this house down, because it is kind of a sketchy
5 deal. So I got in the 330 excavator and I helped him
6 tear the house down.

7 Q Okay, thank you.

8 And did you run the tub that day?

9 A Yes.

10 MS. LaROSE: Jim, could you -- Your Honor, we are
11 going to put on the screen Union's Exhibit 75, Page 1.

12 **(Union's Exhibit 75, marked for identification.)**

13 *[Long pause]*

14 Q BY MS. LaROSE: Could you please tell us what we
15 are looking at on Page 1 of Union Exhibit 75?

16 A This is a screenshot off of my iPhone. It is a
17 screenshot of Schedule Base for that day what I was
18 asked to do.

19 Q Okay. And what does it indicate that you did?

20 A It says, "Dave Meir's farm of Maysville and a tub."

21 Q Okay, thank you.

22 And I'm sorry, did you run heavy equipment on April
23 13th, 2019?

24 A Yes. That is the day I ran the 330 Excavator
25 tearing the house down.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q I'm sorry, thank you.

2 Moving to N2609.

3 JUDGE STECKLER: Is this Union's Exhibit 75 again?

4 MS. LaROSE: Yes.

5 JUDGE STECKLER: Okay, did you -- have we already
6 admitted U-75?

7 MS. LaROSE: We did not, Your Honor, because there
8 are more pages that I was going to have the witness
9 identify.

10 JUDGE STECKLER: Okay.

11 Q BY MS. LaROSE: Looking at N2609, there is an entry
12 in there for April 16, 2019, labeled "Spoils/Dirt."

13 Can you tell us what you were doing that day?

14 A The 16th, I remember moving the 770, the 500 to
15 Mark Twain with the 208 and the lowboy, and the 208 is
16 the summary, and I also was -- it was kind of slow after
17 that and I loaded dirt with the excavator at Honda.

18 Q Okay, and this is the Honda yard; is that right?

19 A Yeah, that is Needham's dirt yard, we called it.

20 MS. LaROSE: Jim, can you please put Union's
21 Exhibit 74 on the screen?

22 **(Union's Exhibit 74, marked for identification.)**

23 Q BY MS. LaROSE: Mr. Gripp, there are some photos on
24 the screen.

25 MS. LaROSE: Go to Page 2, please, Jim.

1 [Long pause]

2 MS. LaROSE: Excuse us, Your Honor. We are having
3 trouble seeing the whole exhibit because of the
4 positioning of our camera.

5 Okay.

6 Q BY MS. LaROSE: Can you please look at Page 1 of --
7 Pages 1 and 2 of this exhibit?

8 A Uh-huh.

9 Q Could you tell us who was in those pictures?

10 A That is me running the machine.

11 Q Running which machine?

12 A The John Deere excavator.

13 Q Okay, and it looks like the timestamp on the photo
14 is April 16, 2019?

15 A Yes.

16 Q Okay. Thank you.

17 MS. LaROSE: Your Honor, I would move for the
18 admission of Union's Exhibit 74.

19 MR. NIEW: Objection, foundation.

20 JUDGE STECKLER: Who took those pictures, Mr.
21 Gripp?

22 THE WITNESS: Patrick Carlson with Local 150.

23 JUDGE STECKLER: Okay, and how did you happen to
24 get them?

25 THE WITNESS: These are not mine.

1 JUDGE STECKLER: Okay, but you recognize them?

2 THE WITNESS: Yes, I do. It is me in the machine,
3 yes.

4 JUDGE STECKLER: Other objections?

5 MR. WILLIAMS: No objection, Your Honor.

6 MR. NIEW: Same objection; foundation. He can't
7 testify as to these pictures.

8 JUDGE STECKLER: He recognized himself in it. The
9 timestamps.

10 I am going to accept Union's Exhibit 74.

11 MS. LaROSE: Thank you, Your Honor.

12 **(Union's Exhibit 74, received into evidence.)**

13 Q BY MS. LaROSE: Moving on, Union's Exhibit 65,
14 Bates No. N2611.

15 I am going to direct your attention, Mr. Gripp, to
16 the entry from May 6, 2019.

17 A Yep.

18 Q "Haul black dirt."

19 Did you -- explain to me what you recall about that
20 entry, "Haul black dirt."

21 A I loaded myself with the John Deere excavator and
22 took the dirt to Garfield School in Moline.

23 Q Okay. And what is the reference to "Haul black
24 dirt" mean?

25 A It just means I used the semi to haul dirt to

1 Garfield School," or 248 is a dump truck, I'm sorry.

2 Q Okay, and so, this -- this loading of the black
3 dirt took place with another piece of equipment?

4 A Yes, the excavator, a John Deere excavator at
5 Honda.

6 Q Okay. Same timesheet...

7 Directing your attention to May 10, 2019. There's
8 an entry that says, "Dave Maier Maysville Farm."

9 Can you tell us what that description meant?

10 A I went with Brandon Harvey, again to the Dave Maier
11 Farm north of Maysville, and Brandon was having -- we
12 were cleaning up the property, tires, tree stumps, stuff
13 of that nature, and we had to take the rubber off the
14 rims of the tires that were laying around.

15 So Brandon had me use the 330 excavator to hold
16 down on the rubber while he ripped the steel rim out of
17 the -- out of the tire so that we could dispose of the
18 tires and the rims accordingly, and I also helped load
19 tree stumps that day with the same machine.

20 Q Okay, thank you.

21 JUDGE STECKLER: Mr. Gripp, what does 537 mean in
22 terms of a machine?

23 THE WITNESS: That is the truck that I took to the
24 property.

25 JUDGE STECKLER: Why doesn't any of these reflect a

1 different machine that you used?

2 THE WITNESS: It was common to go to a job like
3 that and jump from machine to machine if they needed
4 help. This entry there is just showing what vehicle I
5 took to the job.

6 JUDGE STECKLER: Okay, so -- so you didn't break up
7 your day, where it said like, right above there, on 5-7
8 "Haul Rock - 248," and then the same day, "Tear out
9 asphalt." So then you didn't break it up like that to
10 show the --

11 THE WITNESS: No.

12 JUDGE STECKLER: Okay. You may proceed, Ms.
13 LaRose.

14 MS. LaROSE: Thank you, Your Honor.

15 Jim, can we please go to N2612?

16 N2612, for the record, is also Union's Exhibit 65.

17 Q BY MS. LaROSE: Can I direct your attention,
18 please, sir, to the entry for May 13, 2019, which is
19 labeled "Haul GR-12."

20 A Yes.

21 Q Can you please tell us what that description means?

22 A GR-12 is a grade of rock, and I used a dump truck
23 to haul rock.

24 Q Okay, did you do any heavy equipment operation that
25 day?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yes. At the end of the day when we were done
2 hauling the rock, I was instructed by Tracey Marshall to
3 take the 310 Combination hoe from the ARC in Moline to
4 the dentist office in Moline for Aaron Hamilton so that
5 he could use that same machine the next day.

6 Q Okay, and when you say "ARC," how is that spelled?

7 A A-R-C.

8 Q Thank you.

9 MS. LaROSE: Your Honor, I am going to put in front
10 of the witness what has been marked as Union's Exhibit
11 73.

12 **(Union's Exhibit 73, marked for identification.)**

13 Q BY MS. LaROSE: Mr. Gripp, I am going to play
14 Union's Exhibit 73, which is a recording, and then I am
15 going to ask you to please identify it, as soon as we
16 are done playing it, okay?

17 A Yes.

18 *[Video recording played]*

19 Q Okay, Mr. Gripp, could you please identify that
20 recording for us?

21 A That was taken with my cellphone in my pocket while
22 I am operating the machine, going from the ARC to the
23 dentist office in Moline.

24 Q And again, what machine was that?

25 A 310 Combination hoe.

1 Q Okay.

2 MS. LaROSE: Your Honor, I am going to move for the
3 admission of Union's Exhibit 73.

4 MR. WILLIAMS: No objection.

5 MR. NIEW: Objection as to relevance.

6 JUDGE STECKLER: I think the relevance is showing
7 that he is operating certain equipment.

8 Union's Exhibit 73 is admitted.

9 **(Union's Exhibit 73, received into evidence.)**

10 JUDGE STECKLER: And this is May 13th, correct,
11 2019?

12 MS. LaROSE: Yes, Your Honor.

13 Q BY MS. LaROSE: Mr. Gripp, can you confirm that?

14 A Yes.

15 JUDGE STECKLER: Thank you.

16 MS. LaROSE: Okay, Your Honor, going --

17 Q BY MS. LaROSE: I'm sorry, Mr. Gripp. We are
18 referring to the same timecard, the entry for May 14th,
19 2019, and again, this is N2612 from Union's Exhibit 65.

20 Mr. Gripp, there is an entry that says, "Backfill
21 dirt from May 14, 2019."

22 MR. NIEW: Your Honor, what I have on the screen is
23 N2611.

24 JUDGE STECKLER: Can you scroll down a tad so we
25 can see the bottom? There we go, so that is 2612.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Okay, and May 14th, you were saying, Ms. LaRose?

2 MS. LaROSE: Yes.

3 Q BY MS. LaROSE: Could you please tell us, Mr.

4 Gripp, what the description "Backfill dirt" mean?

5 A Yeah, this backfill dirt is we were backfilling
6 dirt at the Cubby Park in West Branch, Iowa, and I went
7 there with a dump truck.

8 Q Okay. And did you perform any heavy equipment
9 operation that day?

10 A Yes.

11 Q What was it?

12 A I operated a 27C mini excavator.

13 Q Okay.

14 MS. LaROSE: Mr. Connolly, could you please go to
15 Union's Exhibit 75, Page 2?

16 Thank you.

17 Q BY MS. LaROSE: Mr. Gripp, could you please
18 identify that photo for us?

19 A That is a picture of me sitting in the seat of the
20 27C, and I am scraping, the line screening and the stuff
21 away from the batting cage so that we can backfill with
22 black dirt.

23 Q Thank you.

24 And who took this photo?

25 A I did.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Okay. Now we are turning to the timecard labeled
2 as N2612.

3 JUDGE STECKLER: Just a moment please.

4 When did you take that photo, Mr. Gripp?

5 THE WITNESS: On the -- it would have been the day
6 that I was there. It would have been the 14th of May.

7 JUDGE STECKLER: Okay, you may continue, Ms.

8 LaRose.

9 Q BY MS. LaROSE: Okay. Directing your attention to
10 the entry from May 15, 2019, it says, "Site Grading."

11 A Yes.

12 Q Could you please tell us what that description
13 means?

14 A We were doing site grading at Portillo's that day.

15 Q Okay, and did you run heavy equipment that day?

16 A Yes.

17 Q What did you do?

18 A I operated a sheepsfoot compact roller.

19 Q Okay.

20 MS. LaROSE: Could you please, Jim, put on the
21 screen -- I'm sorry, Your Honor. I meant to move for
22 the admission of -- strike that.

23 Jim, could you please put on the screen Union's
24 Exhibit 69?

25 **(Union's Exhibit 69, marked for identification.)**

1 Q BY MS. LaROSE: Mr. Gripp, I am going to play you a
2 recoding, and when we are done, could you please
3 identify it for us?

4 MS. LaROSE: Please go ahead, Jim.

5 *[Video recording was played.]*

6 Q BY MS. LaROSE: Could you please identify that for
7 us?

8 A That's a video taken with my iPhone, in my pocket,
9 operating the sheepsfoot roller.

10 Q And was that from May 15, 2019?

11 A Yes, ma'am.

12 MS. LaROSE: Okay, Your Honor, I would move for the
13 admission of Union's Exhibit 69.

14 MR. NIEW: Objection. It is obviously a staged
15 performance.

16 JUDGE STECKLER: What -- what tells you that, Mr.
17 Niew?

18 MR. NIEW: Because he is just moving a piece of
19 equipment from one spot to another. That is not
20 operating equipment.

21 JUDGE STECKLER: Mr. Gripp, can you explain a bit
22 for Mr. Niew?

23 THE WITNESS: I was running back and forth
24 compacting the dirt with the roller. You can clearly
25 see in the video the guy is pushing dirt with the dozer,

1 and I am rolling it in with the roller.

2 JUDGE STECKLER: Do you recognize the person in the
3 other bulldozer?

4 THE WITNESS: Yeah, it was Tracey Marshall. I know
5 -- I remember it vividly.

6 JUDGE STECKLER: Any other concerns, Mr. Niew?

7 MR. NIEW: None.

8 JUDGE STECKLER: General Counsel, any objections?

9 MR. WILLIAMS: No objections, Your Honor.

10 JUDGE STECKLER: Union's Exhibit 69 is admitted.

11 **(Union's Exhibit 69, received into evidence.)**

12 Q BY MS. LaROSE: I will now show you another
13 recording.

14 JUDGE STECKLER: Do you have an exhibit number, Ms.
15 LaRose?

16 MS. LaROSE: It is Union's Exhibit 68 on the
17 screen, Your Honor.

18 JUDGE STECKLER: Thank you.

19 MS. LaROSE: Go ahead, Mr. Connolly. I am sorry
20 about that.

21 **(Union's Exhibit 68, marked for identification.)**

22 *[Video recording played]*

23 Q BY MS. LaROSE: Mr. Gripp, do you recognize that
24 recording?

25 A Yes.

1 Q What was it?

2 A It was me using an excavator to load myself with
3 rock at Forest Grove School and taking it back to Honda
4 to the drop yard.

5 Q At around what timeframe -- well, who took this
6 video?

7 A I did with my iPhone in my pocket.

8 Q And around what timeframe was this?

9 A This was in the afternoon that same day, after I
10 was at Portillo's running the compactor.

11 MS. LaROSE: Your Honor, I would move for the
12 admission of Union's Exhibit 68.

13 MR. WILLIAMS: No objection.

14 MR. NIEW: Objection; relevance. It doesn't show
15 him operating anything. It just shows something moving
16 and we can't tell what it is.

17 JUDGE STECKLER: He said it is a video he took, so
18 I am going to admit it and we will give it the weight it
19 deserves.

20 Union's Exhibit 68 is admitted.

21 **(Union's Exhibit 68, received into evidence.)**

22 Q BY MS. LaROSE: Returning to timecard N2612, and
23 the time entry from May 16, 2019, it says "Site
24 grading."

25 A Yes.

1 Q Can you please tell us what that description meant?

2 A This was site grading at Portillo's again.

3 Q Did you perform any heavy equipment operation that
4 day?

5 A Yes.

6 Q What was it?

7 A I was instructed by Tracey Marshall to get in the
8 4840 John Deere with a soil conditioner disk to try to
9 dry the soil out so we could grade the property.

10 MS. LaROSE: Mr. Connolly, could you please put
11 Union's Exhibit 75, Pages 3 and 4 up on the screen for
12 us?

13 Q BY MS. LaROSE: On Page 3 of Union's Exhibit 75,
14 Mr. Gripp, do you recognize that photo?

15 A Yes.

16 Q What is it?

17 A That is a picture of me in the seat of 4840. You
18 can see the dirt that we are trying to dry out.

19 Q And that is in reference to the -- to the testimony
20 you just gave about pulling the disk?

21 A Yes.

22 MS. LaROSE: Jim, can we go to Page 4? You are on
23 Page 5 right now.

24 Q BY MS. LaROSE: Okay, we are on Page 4 of Union 75,
25 for the record.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Mr. Gripp, do you recognize the photo on that page?

2 A Yes. This is a photo that I took with my phone out
3 the back window of the 4840. This is a picture of the
4 soil conditioning disk.

5 MS. LaROSE: Your Honor, I am going to move for the
6 admission of Union's Exhibit 75.

7 MR. WILLIAMS: No objection.

8 MR. NIEW: Objection; relevance. It doesn't show
9 anything other than there is equipment.

10 JUDGE STECKLER: I will admit Union's Exhibit 75
11 and give it the weight it deserves.

12 MS. LaROSE: Thank you, Your Honor.

13 **(Union's Exhibit 75, received into evidence.)**

14 MS. LaROSE: Mr. Connolly, could you please put
15 N2613 up on the screen?

16 Q BY MS. LaROSE: Mr. Gripp, directing your attention
17 to the entry for May 24, 2019, it says, "Fill rockbox."

18 A Yes.

19 Q Could you explain to us what that means?

20 A We use the 770 bobcat to load the rockbox.

21 Q Okay, and what piece of equipment did you say you
22 used? I'm sorry, Mr. Gripp.

23 A The 770 bobcat. This was at the naval station.

24 MS. LaROSE: Okay, could you move to N2614, please,
25 Mr. Connolly?

1 Q BY MS. LaROSE: Now, I would direct your attention
2 to May 28, there is an entry on there that says, "Move
3 machinery."

4 Could you please tell us what you were doing that
5 day?

6 A I moved the excavator with the Ford F-250 pickup
7 and a trailer behind it to the Naval Station.

8 Q Okay. And did you operate any heavy equipment that
9 day?

10 A Yes. Chad Havill was there grading the parking
11 lot, and I was using the 770 bobcat to haul rock from
12 one end of the jobsite to the other for him so he could
13 grade it off with the mini-excavator.

14 Q Thank you.

15 Directing your attention to May 30, 2019, there is
16 an entry that says "Haul GR-14." Do you see that entry,
17 Mr. Gripp?

18 A Yes.

19 Q Can you tell us what that means?

20 A I hauled -- this is a type of rock. I hauled it to
21 the Naval Station with the dump truck.

22 Q Okay, and did you run heavy equipment that day?

23 A Yes, I used the same bobcat to help Chad Havill
24 once again at the jobsite, because he didn't need
25 anymore rock, so he had me get in the machine and help

1 him.

2 Q Okay, thank you.

3 Directing your attention to the entry from May
4 31st, 2019, there is an entry that says, "Haul 1"
5 clean."

6 A Yes.

7 Q Could you tell us what that means?

8 A I hauled 1-inch clean rock from the rock quarry to
9 the Naval Station with a dump truck.

10 Q Did you operate heavy equipment that day?

11 A Yes, I used the 770 bobcat to haul rock that Chad
12 Havill -- we were building a little pad off the parking
13 lot for like a picnic area, grading it off.

14 Q And when you say "haul," you mean move the rock; is
15 that right?

16 A I moved the rock with the machine, yes. Sorry.

17 Q That's all right.

18 MS. LaROSE: Okay, could you please move us, Mr.
19 Connolly, to N2615 in Union 65?

20 Q BY MS. LaROSE: Mr. Gripp, referring to the entry
21 for June 3rd, 2019, it says, "Naval Station."

22 A Yes.

23 Q What work were you doing out there that day?

24 A I went there with the dump truck and they were
25 starting to clean the site up and get rid of some of the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 dirt, and so I got in an excavator and loaded the dump
2 truck myself with the dirt.

3 Q Thank you.

4 Same timecard referencing June 5th, 2019, there is
5 an entry that says, "1" down tailgating house lane."

6 Could you tell us what you did that day?

7 A My friend, Ted, called me and wanted a driveway
8 built, because his driveway was in poor condition, so I
9 hauled 1" down from the rock quarry with the dump truck,
10 and tailgated, I think it was five or six loads. I
11 tailgated it down the lane, and the day before, I had
12 taken a roller out there with the F-250 pickup. Well,
13 after I had tailgated the rock, I used the Bomag flat
14 roller to roll it in, so it would pack it down good and
15 tight, his driveway.

16 Q Okay, and this -- you know, so far, you haven't
17 mentioned that any of this was for Needham. Can you
18 explain for us, was this work for Needham?

19 A Yes, I performed this work for Needham. My friend
20 Ted called me because he knew I drove a dump truck and
21 he knew I worked for Needham, and they had access to
22 machinery and stuff, and he asked me if I could talk to
23 Nick. Well, I met up with Nick Needham and he said,
24 "Yeah, that would be fine," and so I went out there and
25 performed the job all by myself.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Thank you.

2 You made reference to a term that we might not all
3 understand which is "tailgating." Could you explain
4 what you mean by that?

5 A Tailgating rock is when you have a load of rock in
6 the dump truck and there are chains on the back, and
7 then there are special designed hooks on the tailgate.
8 According to how the owner, the person at the site wants
9 it, you can set the chains so you allow the end gate to
10 open only so far, and you raise the box up in the air,
11 and then you take off, and it lays the rock down really
12 nice across the whole driveway, instead of just dumping
13 it in a pile.

14 Q Thank you.

15 MS. LaROSE: Mr. Connolly, could you please move to
16 -- this spot is probably going to be -- oh, maybe not.
17 Maybe not...N2558.

18 Yeah, that might be in Union...

19 Okay, for the record, Your Honor, this is N2558, in
20 Union 65, or at least it will be when we share our
21 screen.

22 JUDGE STECKLER: Can you move it up a little bit,
23 please?

24 Q BY MS. LaROSE: Mr. Gripp, I am going to direct
25 your attention --

1 MS. LaROSE: Your Honor, I'm sorry, is the Zoom --

2 JUDGE STECKLER: That is better for me. How about
3 y'all?

4 MS. LaROSE: Okay.

5 Q BY MS. LaROSE: I am going to direct your attention
6 to June 10, 2019. It says on there, "Mobilization, Rock
7 Island County dump truck," and so that the record is
8 clear, this is actually a Payroll Record Report. It is
9 not a timecard like the preceding documents.

10 Mr. Gripp, could you tell us what you were doing
11 that day?

12 A I was instructed by Curt McKinley to go to the --
13 to their pipe yard and load pipe with the 310
14 combination hoe onto a lowboy trailer and take it to a
15 job site.

16 MR. NIEW: Your Honor, June 10th is not up on the
17 screen.

18 JUDGE STECKLER: It is at the very bottom.

19 Is that correct where you are looking, Ms. LaRose?

20 MS. LaROSE: Yes.

21 JUDGE STECKLER: Okay. Where it says RI Company
22 dump truck; is that correct?

23 MS. LaROSE: Yes.

24 JUDGE STECKLER: Okay.

25 Q BY MS. LaROSE: And I am sorry, Mr. Gripp, what did

1 you say you did that day?

2 A I used the 310 combination hoe to load pipe onto a
3 lowboy trailer to take to the 11th Street - Moline on a
4 water and sewer job.

5 Q Okay.

6 MS. LaROSE: Jim, can you please...

7 Your Honor, we are going to put Union's Exhibit 70
8 up on the screen.

9 **(Union's Exhibit 70, marked for identification.)**

10 Q BY MS. LaROSE: Mr. Gripp, I am going to play you a
11 recording. Can you please identify it for us when it is
12 complete?

13 *[Video recording played]*

14 Q Mr. Gripp, could you tell us -- could you identify
15 that recording for us?

16 A Yeah, it is the 310 combination hoe, and at the
17 beginning of it, you can see the lowboy on the left
18 side. I was using the 310 combo hoe to load the pipe.

19 Q Thank you.

20 MS. LaROSE: Your Honor, I am going to move for --
21 move Union's Exhibit 70.

22 MR. NIEW: Objection as to relevance. It doesn't
23 show he is operating a machine but just moving it.

24 MS. LaROSE: I don't think that is an argument
25 against admission, Your Honor. That is an argument just

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 as to what weight you give it when making the brief.

2 JUDGE STECKLER: Mr. Gripp, what prompted you to
3 make all of these videos?

4 THE WITNESS: In support of 150, that I was
5 operating machinery.

6 JUDGE STECKLER: Okay. Any objection, General
7 Counsel?

8 MR. WILLIAMS: No objection, Your Honor.

9 JUDGE STECKLER: We will enter it and give it the
10 weight it deserves. Mr. Niew, you can argue on your
11 brief also that it only shows moving the equipment,
12 moving pipe onto another truck bed.

13 **(Union's Exhibit 70, received into evidence.)**

14 MS. LaROSE: Those are all of my questions for this
15 witness, Your Honor.

16 JUDGE STECKLER: General Counsel?

17 MR. WILLIAMS: No questions, Your Honor.

18 JUDGE STECKLER: Mr. Niew?

19 MR. NIEW: I have a number of them, but with all of
20 these exhibits, may I have ten minutes to review the
21 exhibits again, so I can formulate some questions?

22 JUDGE STECKLER: Yes, sir. Yes, sir. We will go
23 off the record, please.

24 *[Off the record]*

25 THE COURT REPORTER: We are on the record.

1 JUDGE STECKLER: Thank you.

2 Mr. Niew, you may inquire.

3 CROSS EXAMINATION

4 Q BY MR. NIEW: Yes, Mr. Gripp, you said that you
5 were taking the videos for supporting the Union. Did I
6 hear that correctly?

7 A Yes.

8 Q And when you say "supporting the Union," that means
9 that the Union was present when you were taking those
10 videos; correct?

11 A No.

12 Q Did the Union tell you when to take a video?

13 A No.

14 Q Can you explain why you don't have video from every
15 day, but only from a very few selected days?

16 A By operating machinery from the start at Needham,
17 loading lowboys and performing different duties, and
18 when I signed the card in support of the Union, I
19 started taking these videos and pictures to show that I
20 did operate machinery on a regular basis.

21 Q Okay, but now you can answer my question. Why
22 didn't you take video every day?

23 MS. LaROSE: Objection, he has answered.

24 JUDGE STECKLER: I think I understand the answer,
25 Mr. Niew. You may continue.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q BY MR. NIEW: I'd like to go back to where you
2 spoke about Pat Carlson, the Union Rep. Do you recall
3 that?

4 A Yes.

5 Q And that was Union's Exhibit 74, if I remember
6 correctly?

7 A Yes.

8 Q And that was taken on Needham Excavating property;
9 correct?

10 A The picture was not taken from Needham property,
11 no. It was taken from the road.

12 Q And the -- you invited the Union Rep to take that
13 picture that day?

14 A No.

15 Q Then how did the Union Rep happen to get there that
16 day?

17 A A Union truck trailed us every day. They followed
18 us to wherever we were going, and he was sitting on the
19 road and he took the pictures himself. I did not ask
20 him to take the pictures.

21 Q When was the first time you saw that photo?

22 A Pretty much right after he took it. He showed me
23 that he took the pictures.

24 Q And you would have had to have left the jobsite, or
25 he would have had to have come on the jobsite?

1 A No, I met up with him later after work.

2 Q Now, all of the testimony you have given is based
3 from 2019. Would that be accurate?

4 A No.

5 Q What year?

6 A There is one from -- in '18, the year 2018.

7 Q You didn't take any notes of what you did every
8 day; isn't that correct?

9 A I did after I started showing support for the
10 Union. I carried a notebook and I wrote down every day
11 what I did.

12 Q And did you produce that notebook to anybody?

13 A No, the Union has possession of it.

14 MR. NIEW: One second, Your Honor.

15 *[Long pause]*

16 Q BY MR. NIEW: When was the last time you reviewed
17 that notebook?

18 A It would have been when I took the notes.

19 Q So you haven't looked at it from 2018 or 2019 until
20 today; that's your testimony?

21 A Yes.

22 MR. NIEW: I have no further questions.

23 JUDGE STECKLER: Ms. LaRose, do you have further
24 questions?

25 MS. LaROSE: Your Honor, may I have a minute,

1 please?

2 JUDGE STECKLER: Yes, let's go off the record
3 again.

4 *[Off the record]*

5 JUDGE STECKLER: Back on the record.

6 MS. LaROSE: Your Honor, we are going to put on the
7 screen what I have marked as --

8 JUDGE STECKLER: Well, just a moment. Mr. Niew has
9 another question --

10 MS. LaROSE: Oh.

11 JUDGE STECKLER: -- before you start.

12 MS. LaROSE: Sorry.

13 Q BY MR. NIEW: Mr. Gripp, you recognized that you
14 could put on a timecard when you are actually operating
15 a machine; is that correct?

16 A Yes.

17 Q And you did that on several occasions; isn't that
18 correct?

19 A Yes.

20 Q And on one of the timecards, you put down a tree
21 *[Phonetic]*, which was a heavy equipment; is that
22 correct?

23 A Yes.

24 MR. NIEW: No further questions.

25 JUDGE STECKLER: Okay, Ms. LaRose.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MS. LaROSE: Thank you.

2 REDIRECT EXAMINATION

3 MS. LaROSE: Okay, we are going to put on the
4 screen, Your Honor, what we have marked as Union's
5 Exhibit 76.

6 **(Union's Exhibit 76, marked for identification.)**

7 MS. LaROSE: And Jim, would you please just page
8 through this so that Mr. Gripp can take a look at it?

9 *[Long pause]*

10 Q BY MS. LaROSE: Mr. Gripp, can you identify what we
11 have marked as Union's Exhibit 76?

12 A Yeah, those are my notes from my notebook that I
13 took every day.

14 Q Are those the notes that Mr. Niew was asking you
15 about a few minutes ago?

16 A Yes.

17 MS. LaROSE: Okay, we are going to move to admit
18 Union's Exhibit 76.

19 JUDGE STECKLER: Was this turned over during the
20 subpoena process?

21 MR. NIEW: We didn't see that.

22 MS. LaROSE: It wasn't requested, Your Honor.

23 JUDGE STECKLER: Okay. What was -- what did you
24 request, Mr. Niew, that this would have fulfilled, or
25 was this a Section 7 issue?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 MR. NIEW: I -- I don't have the subpoena handy,
2 but I --

3 JUDGE STECKLER: I think I probably would have
4 quashed the Section 7, wouldn't I?

5 MS. LaROSE: Your Honor, it was not requested. I
6 have their subpoena memorized. There was one paragraph
7 where they asked for phone records, and --- and then the
8 remaining paragraphs were about whether -- were Hiring
9 Hall records and whether Mr. VanOpDorp or Mr. Gripp had
10 been laid off or refused jobs in the timeframe after
11 their termination and layoff.

12 It did not ask for this, and Mr. Niew is buffaloing
13 you if he is suggesting that he did.

14 JUDGE STECKLER: Okay, I am going to admit this,
15 and will give it the weight that it deserves.

16 **(Union's Exhibit 76, received into evidence.)**

17 MS. LaROSE: Those are all of my questions, Your
18 Honor.

19 JUDGE STECKLER: General Counsel?

20 MR. WILLIAMS: No questions, Your Honor.

21 JUDGE STECKLER: Mr. Niew?

22 MR. NIEW: Nothing further.

23 JUDGE STECKLER: Okay. Mr. Gripp, once again, you
24 are about to be excused.

25 Thank you for coming in this morning.

1 Please do not discuss your testimony with anyone
2 until after this hearing is over.

3 THE WITNESS: Yes, Your Honor.

4 [Witness excused]

5 JUDGE STECKLER: Ms. LaRose, do you have further
6 witnesses?

7 MS. LaROSE: We do not, Your Honor.

8 JUDGE STECKLER: General Counsel, just to make
9 sure?

10 MR. WILLIAMS: No, Your Honor. No more witnesses.

11 JUDGE STECKLER: Mr. Niew, do you have rebuttal
12 witnesses?

13 MR. NIEW: I do, and it will take a couple minutes
14 to get them and get them set up.

15 JUDGE STECKLER: Okay, thank you.

16 We will go off the record, please.

17 [Off the record]

18 THE COURT REPORTER: We are on the record.

19 JUDGE STECKLER: Thank you, Mr. Molinaro.

20 It looks like Respondent is calling Mr. Nick
21 Needham back to the stand; is that correct?

22 MR. NIEW: That's correct.

23 JUDGE STECKLER: Thank you.

24 Mr. Needham, if you could take yourself off of
25 "Mute." There you go.

1 (Whereupon,

2 **NICK NEEDHAM**

3 having been previously sworn/affirmed, was recalled as a
4 witness herein, and was further examined and testified via
5 video-conference, as follows:)

6 JUDGE STECKLER: Welcome back, although you have
7 been in all of the proceedings.

8 As usually, you are getting to be a pro at this.
9 You are in a room by yourself?

10 THE WITNESS: Yes.

11 JUDGE STECKLER: Is the door open or shut?

12 THE WITNESS: Shut.

13 JUDGE STECKLER: Any documents in front of you?

14 THE WITNESS: Nope.

15 JUDGE STECKLER: And you have been with us
16 throughout all of these proceedings, so the next time, I
17 will let you ask me the questions, okay?

18 THE WITNESS: Sounds good.

19 JUDGE STECKLER: Okay, Mr. Niew, you may proceed.

20 DIRECT EXAMINATION

21 Q BY MR. NIEW: Nick, did you hear the testimony
22 about drug testing of laborers in 2019?

23 A Yes.

24 Q Were you aware that the laborers were drug-tested?

25 A I was not, no.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q Does Needham Excavating have a safety policy or a
2 safety procedure for training?

3 A Yes.

4 Q And can you generally describe what that is?

5 A Once a year, we get the whole company together and
6 have a safety consultant come out and do a presentation,
7 and kind of review all of our safety policies.

8 Q Would that safety consultant be Midwest
9 Consultants, also known as MCCI to you?

10 A Yes. We have employed them for a couple years.

11 Q Does MCCI also conduct jobsite inspections?

12 A Yes.

13 Q Do you know approximately how often they do that?

14 A Couple -- it usually depends on their schedule when
15 the weather, like usually we would like to see about
16 once every couple of weeks, just kind of on a random
17 jobsite.

18 Q And do they give you reports?

19 A Yes.

20 Q Verbal or written?

21 A Written.

22 MR. NIEW: We want to put up Respondent's Exhibit
23 22.

24 It is fifty-some pages long -- 94 pages long, I
25 apologize.

1 JUDGE STECKLER: Could you scroll back up to the
2 first page, please?

3 Okay, thank you.

4 I was just checking the day. I'm sorry, Mr.
5 Wright.

6 **(Respondent's Exhibit 22, marked for identification.)**

7 Q BY MR. NIEW: While we are going through that,
8 Nick, are there any places in there that you recall that
9 discusses drug testing?

10 A Yes.

11 JUDGE STECKLER: And approximately where in the
12 document is this?

13 MS. LaROSE: Your Honor?

14 JUDGE STECKLER: Yes?

15 MS. LaROSE: If I may interpose an objection.

16 The Union requested -- well, first of all, I would
17 like to do some voir dire first, Your Honor.

18 JUDGE STECKLER: Go ahead, please.

19 VOIR DIRE

20 MS. LaROSE: Mr. Niew, or Mr. Wright, whoever is
21 handling the Screen Share, can you please go to the
22 first page of this exhibit?

23 Q BY MS. LaROSE: Mr. Needham, am I correct that this
24 document was reviewed May 2018?

25 A Are you correct?

1 Q Yes.

2 A That's what it says, yes.

3 Q Okay. Any reason to think that that is incorrect?

4 A Not that I know of.

5 Q Okay.

6 MS. LaROSE: And Mr. Wright, if you have -- Mr.
7 Wright, we can see your Windows Explorer on the screen,
8 and I don't think you want us to. Yeah, okay.

9 Having made that mistake myself, that is why I
10 asked. Your Honor, we subpoenaed from the Company all
11 written policies. Your Honor, in the unit determination
12 case, we subpoenaed handbooks and policies and we did
13 not get this document in response, and if you look at
14 Union's Exhibit 56, which has been uploaded to Share
15 Point, it is the Employer's response to that request,
16 and they say, "No handbooks are in effect for the last
17 twelve months." That response was given to us July 2nd
18 of 2019, or thereabouts.

19 JUDGE STECKLER: Okay, can we get that -- can
20 someone else share screen so we can take a peek?

21 And while we are looking at that, General Counsel
22 did you subpoena safety -- documents regarding safety?

23 MR. WILLIAMS: Not safety, but disciplinary
24 records, disciplinary policies, but not safety.

25 JUDGE STECKLER: Okay, are there any -- Mr.

1 Needham, to your recollection, does the safety have any
2 statements about disciplinary action?

3 THE WITNESS: I am not --

4 JUDGE STECKLER: You don't know?

5 THE WITNESS: I don't know.

6 JUDGE STECKLER: You would have to re-read the
7 whole 90-some-odd pages to figure it out?

8 THE WITNESS: Yes.

9 JUDGE STECKLER: So that's Union 56 -- and Mr. Niew
10 and Mr. Wright, is that correct, as what was in place
11 when the pre-election representation case went forward?

12 MR. NIEW: Yes, and we don't view this as a policy
13 manual or a handbook.

14 JUDGE STECKLER: You don't consider safety a
15 policy?

16 Let's go back to the first page of Respondent's
17 Exhibit 22.

18 *[Long pause]*

19 JUDGE STECKLER: While we are waiting, Mr. Needham,
20 did you rely on this Corporate Safety Manual to
21 terminate Mr. VanOpDorp?

22 THE WITNESS: Can you repeat that?

23 JUDGE STECKLER: Did you rely on your Safety Manual
24 for any reasons to terminate Mr. VanOpDorp?

25 THE WITNESS: There are things in there that he

1 violated that were safety. I mean, I thought we --

2 JUDGE STECKLER: Well, let me -- let me make sure -
3 - on the day that you terminated him, was there anything
4 in your brain that said, "Because you have had all of
5 these safety violations, Mr. VanOpDorp, we are
6 terminating you." Or was this something that came back
7 later when you made that list up?

8 THE WITNESS: Well, I -- as I testified earlier,
9 there were multiple reasons why Adam was terminated, and
10 some of those are in this manual. I did not bring it up
11 directly to him during his termination.

12 JUDGE STECKLER: Okay, so you did rely on some of
13 the policies in here?

14 THE WITNESS: Yes, there was factors; all of that,
15 of his termination that are in this letter covered in
16 here, yes.

17 MR. WILLIAMS: And Your Honor --

18 JUDGE STECKLER: Go ahead, Mr. Williams. That is
19 exactly what I was going to ask.

20 MR. WILLIAMS: And then my request, then under
21 Paragraph 9 and 10 of my subpoena, covers "handbooks,
22 rules, regulations concerning layoffs, recall, talking
23 during working time, and then any and all policies which
24 were in effect concerning the discipline of employees,
25 including not -- including, but not limited to those

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 regarding disciplinary procedures and any system of
2 progressive discipline, so to that extent, that if he
3 uses -- if he is relying on that which he already
4 testified to, that I had asked that you draw an adverse
5 inference, and that -- and not allow him -- not allow
6 Respondent to use this in any way, at least with respect
7 to Adam VanOpDorp.

8 JUDGE STECKLER: Ms. LaRose, do you have commentary
9 on the record?

10 MS. LaROSE: *[Inaudible - muted]*

11 MR. WILLIAMS: You are muted.

12 JUDGE STECKLER: Ms. LaRose?

13 MS. LaROSE: I am sorry about that, Your Honor.

14 I think the Employer should be foreclosed from
15 using this, because it did not produce it in the
16 previous proceeding.

17 JUDGE STECKLER: Let me ask you a couple questions,
18 Mr. Needham, about this.

19 You expect employees to follow what is in the
20 safety manual; correct?

21 THE WITNESS: Yes.

22 JUDGE STECKLER: What, if anything, do -- do you
23 give a copy of this manual to employees?

24 THE WITNESS: New employees are supposed to get a
25 copy of that.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 JUDGE STECKLER: Okay, do they have to sign for it
2 by any chance?

3 THE WITNESS: Honestly, I am not sure of that.

4 JUDGE STECKLER: Okay, let's proceed with the
5 questioning, and then I will make a decision about what
6 to do about Respondent's Exhibit 22.

7 Mr. Niew --

8 MS. LaROSE: Your Honor -- Your Honor, may I make
9 one more point, which is that maybe, even the
10 appropriate remedy is to -- is -- is to not allow, to
11 strike all of the Employer's evidence regarding safety
12 because of its failure to disclose this document when it
13 was required to, as a matter of law, in the last
14 proceeding, and I will reserve further argument on that
15 subject, or for when Your Honor returns to it, as you
16 have indicated you might.

17 JUDGE STECKLER: Okay, Mr. Niew, you may proceed.

18 CONTINUING DIRECT EXAMINATION

19 Q BY MR. NIEW: Nick, Respondent's Exhibit 22, was
20 this ever passed out at any meeting of employees?

21 A Yes, it was.

22 Q And do you remember approximately when did occur?

23 A May of 2018, the early part of May.

24 Q And was it ever passed out in 2019?

25 A I honestly don't know about '19.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Q When it was passed out, was -- the entire document,
2 was it given to the employees that were present?

3 A Yes.

4 Q Who conducted the meeting?

5 A That meeting was conducted by Scott Jeffries from
6 MCCI.

7 Q And were you present?

8 A Yes.

9 Q And did you see the document being passed out?

10 A Yes.

11 Q Going back to the manual, I think you said there is
12 a place that discusses the drug policy?

13 A Yeah, there is -- I think it is on like Page 58
14 that we looked at earlier in regards to the D.O.T. --
15 employees are responsible for the D.O.T.

16 JUDGE STECKLER: So, let me make sure I am
17 understanding this correctly, Mr. Needham.

18 A Couple weeks ago you didn't remember this, but
19 now that you have seen the manual, your recollection has
20 been refreshed; is that correct?

21 THE WITNESS: Well, honestly I did -- I was under
22 the assumption on the D.O.T. regulations, my assumptions
23 were wrong, since I last testified, so -- from what we
24 had to do to be in compliance.

25 JUDGE STECKLER: Who normally handles the

1 compliance for that? Do you know?

2 THE WITNESS: It was something with kind of the
3 handover between Joe and kind of everything down there,
4 there is a few things, I guess, that is kind of -- that
5 get overlooked at times, and this was one.

6 Like I said, we were under the assumption that if
7 we were not for hire, and stayed within a certain
8 distance to our home, that there were certain
9 regulations that we did not have to -- oh, like there
10 was a waiver of some sort in there, but like I said, as
11 -- since that testimony when Ms. LaRose brought it up a
12 couple weeks ago, we have figured out what the laws are,
13 and are taking steps to get everybody -- get everything
14 into compliance.

15 JUDGE STECKLER: Okay, so this is a more recent
16 development, correct?

17 THE WITNESS: Yes.

18 JUDGE STECKLER: Okay, and do you have to also
19 follow D.O.T. weight limits?

20 THE WITNESS: Weight limits?

21 JUDGE STECKLER: Yes, like if you are going from
22 Illinois to Iowa with your truck, say a dump truck, do
23 you have to do weight limits, check the weight limits?

24 THE WITNESS: Yeah.

25 JUDGE STECKLER: Okay.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Mr. Niew, you may continue.

2 Q BY MR. NIEW: What steps have you taken since your
3 last testimony to be in compliance with the drug
4 testing?

5 A We have contacted a testing facility that has a --
6 I don't know what -- a physician that sets up your
7 account and he -- he does all of the paperwork to keep
8 us in compliance, and they will start requiring -- they
9 will take care of calling the people for the random drug
10 tests and things like that. Like I said, we are in the
11 process of -- all of the paperwork has been submitted to
12 him, and now we are just trying to get everything
13 scheduled to get guys in for their initial drug tests.

14 MR. NIEW: Your Honor, at this point, I offer
15 Respondent's Exhibit 22.

16 MS. LaROSE: Your Honor, same objection. This was
17 -- first of all, this was -- I don't know that it is
18 even relevant because so far, what we have heard is,
19 there is nothing about relying on this document for
20 anything in connection with this case. All we have got
21 is some post testimony or justification saying, "Oh,
22 well now we are getting our safety kit together."

23 What does this document have to do with that?
24 Nothing. And, in fact, it actually undercuts the
25 explanation that we have just been given, because it

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 says, "All CDL drivers must comply with all applicable
2 D.O.T. regulations, including successful completion of
3 medical, drug, and alcohol evaluations," which would
4 tend to suggest to a reasonable person that some form of
5 drug testing, drug and alcohol testing was required.

6 So I don't see where we are going with this
7 document. It seems totally irrelevant to me, and as I
8 said before, it was not produced in response to the
9 subpoena. The Employer should not be rewarded for
10 holding this document back by letting them introduce it
11 for such a tenuous purpose.

12 JUDGE STECKLER: I am going to admit it, but as
13 General Counsel has suggested, we take adverse
14 inferences, and please be specific about what adverse
15 inferences you want taken.

16 MR. WILLIAMS: Well, Your Honor -- Your Honor,
17 pursuant to your own questions asked whether or not that
18 the Employer -- the Respondent relied on any portion of
19 this document to discipline Adam VanOpDorp, and
20 possibly, I don't know to the layoff of Brett Gripp, and
21 so to that extent that my subpoena goes directly to this
22 document as it relates to any discipline or recall or
23 layoff, I -- I think they should be foreclosed because
24 that unduly prejudices me. I can't --

25 So, if Your Honor is going to allow, then I would

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 ask that -- that Your Honor draw all adverse inferences
2 based on any reliance by the Respondent concerning any
3 reliance of any of this document to discipline Adam
4 VanOpDorp, discharge him, and/or layoff Brett Gripp.
5 They didn't produce it pursuant to subpoena, and as a
6 matter of fact, on 611(c), they were specifically asked,
7 Nick Needham, as well as the other 611(c), they were
8 asked whether any policies were in writing that had to
9 do with any kind of discipline or progressive system of
10 discipline, and they said, "No."

11 JUDGE STECKLER: Yeah --

12 MR. WILLIAMS: So --

13 JUDGE STECKLER: I understand, and what I am saying
14 is that we can admit it, but I would ask that both the
15 Union and the General Counsel state what they think this
16 document -- if it should be given any weight, and if any
17 adverse inferences should be drawn.

18 MR. WILLIAMS: In general, Your Honor, because we
19 can't go into specifics, because we didn't have a chance
20 to review this document --

21 JUDGE STECKLER: Well, on --

22 MR. WILLIAMS: -- and --

23 JUDGE STECKLER: On the brief -- on the brief you
24 may make specific arguments.

25 MR. WILLIAMS: Okay.

1 MS. LaROSE: And, Your Honor, I would just mention
2 for the record that my -- my request for adverse
3 inference is -- it is status to the testimony that
4 accompanied this document.

5 JUDGE STECKLER: Well, then you can also address
6 that as part of your credibility argument.

7 MS. LaROSE: Thank you.

8 JUDGE STECKLER: And Mr. Niew, you can also address
9 it as part of your credibility and what weight it should
10 deserve.

11 MR. NIEW: Thank you, Your Honor.

12 **(Respondent's Exhibit 22, received into evidence.)**

13 JUDGE STECKLER: Okay, next -- and now that we are
14 done with 22, do you have further questions for Mr.
15 Needham?

16 MR. NIEW: Yes. I would like to pull up Exhibit R-
17 23.

18 **(Respondent's Exhibit 23, marked for identification.)**

19 *[Long pause]*

20 Q BY MR. NIEW: Let's go page by page and I will ask
21 questions.

22 The first page of R-23, can you explain what that
23 is?

24 A That is a sign-in sheet for one part of that safety
25 meeting that was on May 3rd of 2018. That was...

1 Q And would it be correct to say that this -- the
2 people signed this themselves?

3 A Yes.

4 Q When I say people, the employees that were present?

5 A Yes.

6 Q Okay, now go to Page 2, which is a 5-3-18 sign-in
7 sheet. Is that a continuation or a --

8 A No, it is another sheet -- there were different
9 topics, and they had a sign-in sheet for each, I guess,
10 little meeting inside the one big meeting.

11 Q And what does a "Silica Standard" mean?

12 A When you are cutting concrete, they put out new
13 requirements a couple -- I think it was two years ago,
14 or maybe three years ago, since that was '18. So...

15 Q Now, go to the third page.

16 The topic says "PPE."

17 JUDGE STECKLER: Can we go back up to the "Silica
18 Standard" page, just a moment, please.

19 *[Long pause]*

20 JUDGE STECKLER: Okay, thank you.

21 Okay, is there anything particular on PPE, Personal
22 Protective Equipment; is that correct, as in non-COVID
23 times?

24 Q BY MR. NIEW: And the next page is "Excavation
25 Safety."

1 Was that discussed?

2 A Yes.

3 Q And the next page after that is "Struck by Safety."
4 What is that all about?

5 MS. LaROSE: Objection to the relevance, Your
6 Honor.

7 JUDGE STECKLER: I don't know what "Struck by
8 Safety" is, so I am going to allow the question.

9 THE WITNESS: Oh, you want me -- okay.

10 Just being aware of your surroundings when you are
11 working around heavy equipment on the jobsite with
12 trucks and machines and everything, because there are
13 some blind spots.

14 JUDGE STECKLER: So you don't want to be struck by
15 something.

16 THE WITNESS: I would rather not be.

17 JUDGE STECKLER: Okay, other than lightning --

18 THE WITNESS: Yes.

19 Q BY MR. NIEW: And then the next page is "Safety
20 Manual Revisions." Do you see that?

21 A Yep.

22 Q And what was presented there?

23 A It is when the safety manuals are passed out.

24 Q And when you say the "safety manuals," that would
25 be Exhibit R-22?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A Yes.

2 Q And the final page is -- well, it is "Safety
3 Manuals (Continued)."

4 A Yes.

5 MR. NIEW: At this time, I offer R-23.

6 MS. LaROSE: Same objection, Your Honor.

7 JUDGE STECKLER: Mr. Needham, other than the sign-
8 in sheets, do you have handouts from that training?

9 THE WITNESS: I do not. I could not find them for
10 that meeting.

11 JUDGE STECKLER: Okay.

12 Mr. Williams, any objections?

13 MR. WILLIAMS: Same objection as the prior
14 document.

15 JUDGE STECKLER: Okay, R-23 will be admitted with
16 the same caveats about arguing adverse inferences, etc.,
17 and the weight it deserves.

18 **(Respondent's Exhibit 23, received into evidence.)**

19 Q BY MR. NIEW: Nick, we are putting up Exhibit R-24

20 **(Respondent's Exhibit 24, marked for identification.)**

21 Q BY MR. NIEW: It has got several pages, so let's go
22 through each page, one at a time.

23 There is a date 5-16. Do you know what year that
24 is?

25 A I would assume it to be 2018, but I honestly -- no,

1 it would probably be 2019, for Forest Groves.

2 Q Can you explain what the X's in the far left-hand
3 corner mean?

4 A That -- that is the -- the far left column is
5 everything was safe, and everything was being followed
6 on that day.

7 Q Would it be a fair statement that Mr. Justin
8 Hitchcock conducted a safety inspection of a jobsite?

9 A Yes.

10 Q And go to the second page, which is 7-19-19.

11 Would you explain what that document is?

12 A It is an Excavation Inspection form from a project
13 in the City of Moline.

14 JUDGE STECKLER: Can you tell me who was on that
15 project that day?

16 THE WITNESS: Not off -- no.

17 JUDGE STECKLER: Okay, continue.

18 Q BY MR. NIEW: Going to the third page, 8-16-19, and
19 that is also on the inspection. Can you tell us what
20 that is?

21 A It is an inspection from Forest Grove School again.

22 MS. LaROSE: Objection to the relevance of his
23 testimony or any of these documents. This is completely
24 after the timeframe when the discriminatees were working
25 on the job. I am not sure I understand why we are

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 seeing this.

2 JUDGE STECKLER: Mr. Niew, can you give me a heads-
3 up on this, please?

4 MR. NIEW: Yes. It is going further into the -- to
5 report some dates on 2016 that they are not exactly in
6 the same order, but it is offered for the purpose, or
7 will be offered for the full purpose, is that this
8 company is safe and conducts safety inspections on a
9 very regular basis.

10 JUDGE STECKLER: Does this show that Mr. VanOpDorp
11 or Mr. Gripp were unsafe?

12 MR. NIEW: These documents do not show that.

13 JUDGE STECKLER: Continue with your testimony, and
14 then we will make a determination about the exhibit once
15 it is offered.

16 Q BY MR. NIEW: Go to the date of August 28th, 2019,
17 and briefly describe what that is.

18 A It is an Excavation Inspection form that was
19 performed at Dolan Townhomes.

20 Q And the two photos following it, what do those
21 photos depict?

22 A I am not sure what the first ones -- it kind of
23 looks like a picture of the site.

24 JUDGE STECKLER: Let's go back to the checklist for
25 just a moment, please.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 [Long pause]

2 JUDGE STECKLER: Okay, thank you.

3 Go ahead, Mr. Needham, with your description.

4 THE WITNESS: To me, that is just a picture of the
5 project site.

6 Q BY MR. NIEW: Were those photos part of the
7 inspection report that you received?

8 A Yes.

9 Q And I would like you to go to the --

10 JUDGE STECKLER: Let me -- I'm sorry, Mr. Niew, can
11 you go back up to the first page of the -- of the August
12 28th report?

13 [Long pause]

14 JUDGE STECKLER: Okay, so -- so this is after Mr.
15 VanOpDorp's termination; correct?

16 THE WITNESS: Correct.

17 JUDGE STECKLER: Okay, go ahead

18 Q BY MR. NIEW: Okay, which you go to the page which
19 is dated 5-3-18?

20 Can you explain what that document is?

21 A Yeah, that picture above it, that is part of that
22 Silica Standard that they changed. Basically, if you
23 cut a piece of concrete pipe without water, which is not
24 the right way to perform that work, you got to have
25 water on the saws. You don't want any -- you don't want

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 to be inhaling that concrete dust.

2 Q And do you see Adam's name on the 5-3-18 document?

3 A Yes.

4 Q And would you describe where it is?

5 A Second from the bottom.

6 Q Go to the next page; 5-16 -- I'm sorry, 5-15-16.

7 JUDGE STECKLER: Are you saying that Adam did not
8 follow the Silica Standard at that time, Mr. Needham?

9 THE WITNESS: I don't know who was cutting the pipe
10 from the picture. I can't tell.

11 JUDGE STECKLER: Okay, thank you.

12 Q BY MR. NIEW: Nick, could you go to 5-15-16?

13 Can you explain that document?

14 A It is -- it is another inspection form from a
15 project, but I don't recall what job that is off the top
16 of my head. But --

17 JUDGE STECKLER: People weren't using seat belts;
18 is that lack of use?

19 THE WITNESS: More than likely, yes.

20 JUDGE STECKLER: So that was in 2016?

21 THE WITNESS: Yes.

22 Q BY MR. NIEW: Go to the next page, please, June 24,
23 '06 -- of '16, I'm sorry.

24 A Yep.

25 Q Explain that document.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A That is another Excavation Inspection form from a
2 project at Bettendorf over on 18th Street, and Adam was
3 the operator on that project, and they had some unsafe
4 marks there for having the dirt too close to the trench,
5 and then there was no ladders in the trench, as well,
6 for safety egress. And then the --

7 JUDGE STECKLER: Who -- who is responsible for the
8 ladders in the trench?

9 THE WITNESS: The lead man on the project.

10 JUDGE STECKLER: And how can you tell that Adam was
11 the lead man on that project?

12 THE WITNESS: Because he was the operator.

13 JUDGE STECKLER: Is there only one operator on a
14 project like that?

15 THE WITNESS: More than -- most of the time, yes.

16 JUDGE STECKLER: So, you tolerated this from 2016,
17 and then terminated him in 2019; is that what I am
18 understanding?

19 THE WITNESS: No, this is just showing that there
20 was mistakes made that day on the job.

21 JUDGE STECKLER: Okay, so you couldn't tell on the
22 previous ones where they were all checked who was on
23 that job. It was "Good, Good, Good, Good," and then you
24 find one from 2016, and you discovered that it was Adam.
25 When did you make that discovery?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: These are -- I just -- this is --

2 JUDGE STECKLER: You got them when?

3 THE WITNESS: What is that?

4 JUDGE STECKLER: When did you get these?

5 THE WITNESS: They were e-mailed to us last week.

6 JUDGE STECKLER: Okay, so you didn't --

7 THE WITNESS: I seen them -- we have seen them in
8 the past --

9 JUDGE STECKLER: But last week -- but you hadn't
10 seen them since when? You hadn't seen this one since
11 2016?

12 THE WITNESS: Probably not.

13 JUDGE STECKLER: Okay.

14 MS. LaROSE: Your Honor --

15 JUDGE STECKLER: That's okay, Ms. LaRose. I am
16 going to go on with the testimony, and then we will make
17 the determination.

18 Go ahead, Mr. Niew.

19 Q BY MR. NIEW: The next one is 5-15-16 again. Can
20 you explain what that is?

21 A I thought we did that one.

22 JUDGE STECKLER: Please.

23 THE WITNESS: I thought we already did that one.

24 JUDGE STECKLER: That was 5-15, and not June 24th.
25 This was Safety - Seat Belts, okay.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 THE WITNESS: Yeah.

2 Q BY MR. NIEW: Go to the -- what is called MCCI's
3 Safety Inspection Checklist of 6-20-18.

4 Can you explain what that is?

5 A It is an inspection checklist that they use to
6 check out the site in general, where the other ones have
7 just concentrated on the excavation side of things.
8 This kind of looks at the whole site safety.

9 JUDGE STECKLER: And what was the date on that
10 again, sir?

11 MR. NIEW: June 20, '18.

12 JUDGE STECKLER: Thank you.

13 [Long pause]

14 JUDGE STECKLER: Is there a question out there?

15 MR. NIEW: We would offer R-24.

16 MR. WILLIAMS: Same objection, Your Honor.

17 JUDGE STECKLER: Ms. LaRose?

18 MS. LaROSE: Your Honor, I just have some voir dire
19 I would like to do, please, before this gets admitted,
20 and I haven't withdrawn my previous objection to it.

21 JUDGE STECKLER: Okay, Mr. Needham, Ms. LaRose is
22 going to ask you a few questions about the document

23 VOIR DIRE

24 Q BY MS. LaROSE: This document, Safety Inspection
25 Checklist" that is up on the screen right now, Mr.

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Needham, it looks like the document was completed by
2 Jason Fulks; is that right?

3 A I would -- no. I would assume not. That is a MCCI
4 form.

5 Q In the lower left-hand corner, "Jason Fulks."
6 Do you see that?

7 A Yeah.

8 Q What do you think that means?

9 A I don't know. I didn't fill out the form.

10 Q Okay.

11 JUDGE STECKLER: Is it the same color ink that he
12 was using that day?

13 THE WITNESS: He was on that jobsite. That's 11th
14 Street - Moline.

15 Q BY MS. LaROSE: So you didn't complete the form.
16 An employee doesn't complete that form.

17 Do I understand you correctly?

18 A That's correct.

19 MS. LaROSE: Okay, so Your Honor, number one,
20 foundation. You know, this witness doesn't complete it,
21 isn't charged with completing it. Apparently he doesn't
22 keep a copy of it, and so on, as it relates to this
23 checklist, and then Mr. Wright, if you are the document
24 person, could you please go back up to the photographs
25 that we saw?

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 Right there is fine. If you wouldn't mind rotating
2 it, though, so we can actually -- thank you very much.

3 Q BY MS. LaROSE: So, if I understand you correctly,
4 Mr. Needham, this is documenting some kind of -- this is
5 documenting some kind of mistake; is that right?

6 A Yes.

7 Q And that is cutting concrete with no water
8 suppression.

9 A Yes.

10 Q Where there is silica involved?

11 A Yes.

12 Q These pictures are actually from OSHA, aren't they?

13 A Those?

14 Q Yes.

15 A I don't know.

16 Q The Company got reported to OSHA for doing this,
17 didn't it?

18 A Once, yes.

19 Q Well, on this occasion, right?

20 A I don't -- I don't know where these pictures are
21 from. I know where they are from. They are from MCCI.
22 I don't know if OSHA got a hold of them or not.

23 Q Okay, but my question wasn't, who took the photos,
24 so let's try to focus.

25 My question was --

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 A I don't know if they are from OSHA.

2 MS. LaROSE: Your Honor --

3 JUDGE STECKLER: Mr. Needham, she is going to ask
4 you another question, okay?

5 Q BY MS. LaROSE: These photos document the citation
6 from OSHA, correct?

7 JUDGE STECKLER: Well, let's back up a second.

8 Did you get a citation from OSHA for the silica
9 issue?

10 THE WITNESS: I believe they -- I don't believe it
11 was a citation. I believe it was just a warning.

12 JUDGE STECKLER: Okay, when did that happen?

13 THE WITNESS: I believe it was -- it was 2018, I
14 believe. I don't know the exact date.

15 JUDGE STECKLER: Okay, Ms. LaRose, you may
16 continue.

17 MS. LaROSE: Thank you, Your Honor.

18 Q BY MS. LaROSE: And it was in regard to this job,
19 right?

20 A I don't believe so.

21 MS. LaROSE: Okay, so Your Honor, I am going to
22 launch an additional objection.

23 These photos, he doesn't know where these came
24 from. He doesn't know if this is the inspector, he
25 doesn't know if this is OSHA. He just saw the documents

1 for the first time, it sounds like last week, so they
2 aren't regularly kept in the course of business. They
3 are hearsay.

4 JUDGE STECKLER: Mr. Niew, do you have a response?

5 MR. NIEW: Yes, they're -- they are not being
6 offered for the truth of the matter -- they are being
7 offered to show that there is an active safety program
8 which is contrary to what everybody on the other team is
9 trying to put out, that this is just a totally negligent
10 company, which is absolutely false.

11 MS. LaROSE: Well, Your Honor, first of all, that
12 isn't what we said, I don't think, but secondarily, they
13 -- they are being offered for the truth of the matter
14 asserted, which is, "We do regular inspections and we
15 are safe." So, Counsel just using that catch phrase "is
16 not being offered for the truth," doesn't eliminate the
17 fact -- doesn't extinguish the fact that they are being
18 offered for the truth.

19 JUDGE STECKLER: I am going to admit with the
20 caveat to argue to give it the weight that it deserves.

21 MS. LaROSE: Thank you, Your Honor.

22 **(Respondent's Exhibit 24, received into evidence.)**

23 CONTINUING DIRECT EXAMINATION

24 Q BY MR. NIEW: We are not going to look at R-25, but
25 we are moving to R-26. It is sixteen pages, I believe.

1 (Respondent's Exhibit 26, marked for identification.)

2 [Long pause]

3 JUDGE STECKLER: Mr. Niew, is it correct that this
4 is dated February 1st of this year?

5 MR. NIEW: It appears to be.

6 Q BY MR. NIEW: Nick, that date on this document,
7 2-1-21; what does that represent?

8 A That is the date we had our annual company-wide
9 safety meeting this year.

10 MR. NIEW: All right, I offer this for the purpose
11 of showing that safety meetings are continuing at
12 Needham Excavating.

13 MS. LaROSE: Objection to the relevance. This
14 doesn't show that they were giving these at the time
15 that the discriminatees were terminated, Your Honor. I
16 understand that you are likely to let it in, and that we
17 will argue about that in our briefs, and that is -- just
18 trying to...

19 JUDGE STECKLER: General Counsel?

20 MR. WILLIAMS: Same objection. Relevancy and lack
21 of foundation. We don't know if they have been
22 distributed at other safety meetings, and how far back
23 does that go, so no -- no foundation.

24 JUDGE STECKLER: This is a little out of the
25 timeframe, so I am going to ask that Mr. Molinaro put R-

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 26 in the Rejected Exhibit File.

2 **(Respondent's Exhibit 26, is REJECTED and will be placed**
3 **in the Rejected Exhibit File.)**

4 Q BY MR. NIEW: Nick, do you recall before the
5 decertification in, I think it was, 2017, approximately
6 how long was Needham Excavating signed to a Local 150
7 CBA, Collective Bargaining Agreement?

8 A I believe it was approximately like 25 years.

9 Q And from your knowledge, did anybody from the Union
10 ever complain about drug testing, drug policies, and the
11 like?

12 MS. LaROSE: Objection to the relevance.

13 JUDGE STECKLER: Mr. Niew, can you explain the
14 relevance in 2017 and back?

15 MR. NIEW: It shows that the Union was never
16 concerned with drug testing. It is only for the
17 purposes of this proceeding, and not for any other
18 reason.

19 JUDGE STECKLER: Well, I will -- objection is
20 sustained.

21 MR. NIEW: May I have one minute, Judge?

22 JUDGE STECKLER: Yes, off the record, please.

23 *[Off the record]*

24 THE COURT REPORTER: Okay, we are back on.

25 JUDGE STECKLER: Thank you.

1 Mr. Niew?

2 MR. NIEW: No further questions of this witness,
3 Your Honor.

4 JUDGE STECKLER: General Counsel?

5 MR. WILLIAMS: No questions, Your Honor.

6 JUDGE STECKLER: Ms. LaRose?

7 MS. LaROSE: No, Your Honor.

8 JUDGE STECKLER: Mr. Needham, I will ask you to say
9 this along with me, because you know this so well...
10 You are being excused as a witness, but again,
11 please do not discuss your testimony with anybody until
12 after this hearing is over.

13 *[Witness excused]*

14 JUDGE STECKLER: Does Respondent have another
15 witness?

16 MR. NIEW: No, the Respondent has no further
17 witnesses.

18 JUDGE STECKLER: Any re-rebuttal from General
19 Counsel?

20 MR. WILLIAMS: No, Your Honor.

21 JUDGE STECKLER: And how about for the Union, Ms.
22 LaRose?

23 MS. LaROSE: No, Your Honor.

24 JUDGE STECKLER: Let's go off the record for just a
25 moment to check our documents, and then we will resume

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 with closing.

2 *[Off the record]*

3 THE COURT REPORTER: We are on the record.

4 JUDGE STECKLER: Thank you.

5 The parties have check off the record, just to make
6 sure all of their exhibits that are going to be admitted
7 today are admitted.

8 Mr. Molinaro, do you have an estimate of how many
9 pages we have done today?

10 THE COURT REPORTER: Oh, 100 maybe, or less than
11 that.

12 JUDGE STECKLER: Okay. And how many did you put
13 into the computer for our last four days?

14 THE COURT REPORTER: I think approximately a
15 thousand.

16 JUDGE STECKLER: Okay, just to check.

17 Any other matters before I close the hearing?

18 MS. LaROSE: Your Honor, the errata that we
19 mentioned, how -- we are ending a little bit earlier
20 than anybody thought we were going to. How would you
21 like to get that in front of the Court Reporter who has
22 done just such a great job with this hearing?

23 JUDGE STECKLER: Mr. Molinaro, do you have any
24 suggestions, to make sure that it gets in with
25 Respondent -- I guess we don't close the record until we

1 get Respondent's changes to the transcript.

2 THE COURT REPORTER: We have never had that happen
3 in fifteen years, so I am not sure.

4 JUDGE STECKLER: Okay, new ground.

5 All right --

6 MS. LaROSE: Your Honor, I have a list if that
7 would be helpful, that I have assembled.

8 JUDGE STECKLER: Are you talking about the
9 transcript, or the Respondent's corrections to the
10 transcript?

11 MS. LaROSE: I'm sorry, Your Honor. Yes, I am
12 talking about my corrections to the transcript of this
13 proceeding.

14 JUDGE STECKLER: Those you would send in in a
15 motion to me at the close of hearing, and I will rule on
16 it in my decision. I thought you were talking about
17 something else.

18 MS. LaROSE: Well, I am sorry, Your Honor. I -- I
19 may have misunderstood.

20 JUDGE STECKLER: Okay.

21 MS. LaROSE: Thank you.

22 JUDGE STECKLER: That's okay.

23 Okay, in that case, Mr. Molinaro, you are off the
24 hook on that.

25 I will prepare and file with the Board my Decision

1 in this proceeding. I -- a copy will be served on each
2 of the parties.

3 You are reminded to refer to the Board's rules and
4 regulations for information regarding filing of briefs,
5 and any proposed findings for my consideration, and
6 regarding procedures before the Board after the issuance
7 of the Judge's Decision.

8 Now that all of the evidence is in, you have a
9 better opportunity to assess your chances regarding the
10 outcome of the issue that you -- than you had at the
11 onset of the hearing. All parties should carefully
12 weigh the risks entailed, and decide whether an amicable
13 settlement of the issues might not offer a more
14 satisfactory solution. Settlement may be arranged now
15 or at any time before I issue my Decision.

16 I will allow no more than 35 days from the close of
17 the hearing for the filing of briefs and any proposed
18 findings and conclusions. That date is June 14, 2021.
19 Briefs should be filed directly with the Judges'
20 Division Office in Washington, D.C., regardless of
21 whether they are mailed or E-filed.

22 Any requests for an extension of time for the
23 filing of briefs must be made in writing to Chief Judge
24 Giannasi or Deputy Chief Judge Amchan, in that office,
25 and served upon the other parties. The positions of the

ARS REPORTING LLC

22052 West 66th Street, Suite 314

Shawnee, Kansas 66226

Phone: (913) 422-5198

1 other parties regarding the extension to be obtained is
2 set forth in the request. It is the policy of the
3 Division of Judges to grant discretionary extension only
4 when they are clearly justified. Requests for
5 extensions must contain specific reasons and show the
6 requesting party cannot reasonably meet the current
7 deadline.

8 I want to thank the parties for their
9 professionalism. I also want to thank, with my deepest
10 gratitude, Mr. Molinaro and Ms. Spielberg for their
11 assistance throughout the hearing. I could not do it
12 without them.

13 There being nothing further, the trial is now
14 closed.

15 We will go off the record.

16 [Off the record]

17 ***[Whereupon, the hearing was closed at 12:20 p.m.]***

18

19

20

21

22

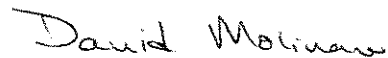
23

24

25

CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), in the matter of **NEEDHAM EXCAVATING, INC. (Respondent)** and **INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO, (Charging Party)**, Case No. 25-CA-239166, on May 10, 2021, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, the hearing, that the exhibits (if any) are complete and no exhibits received in evidence or in the rejected exhibit files are missing.



David Molinaro, Official Reporter

1 **TRANSCRIPT OF 07/09/19 MEETING**

2 **00:01:50** **UNKNOWN:** Don't look at mine. Mine's pretty dirty, I got a bunch of water bottles.

3 **UNKNOWN:** Laughing

4 **UNKNOWN:** (Inaudible mocking)

5 **00:01:59** **UNKNOWN:** That was a pretty good deep voice, ya know.

6 **UNKNOWN:** Don't look at mine either. Is there a recycling out in this place...

7 **UNKNOWN:** ...Spencer, your buddy's sitting down at the end of the road.

8 **UNKNOWN:** Asked him on the way up here.

9 **UNKNOWN:** Supposed to be bringing doughnuts here.

10 **UNKNOWN:** West Lake Park.

11 (Inaudible group chatter)

12 **UNKNOWN:** That's where we used to take all ours.

13 **UNKNOWN:** If its cardboard (inaudible). I got the whole back of the truck.

14 **UNKNOWN:** Don't you live next to a fire department? Just burn it. Aren't you on the fire

15 department? Just burn it in your yard.

16 **UNKNOWN:** Burn it in the pool.

17 **00:02:40** **UNKNOWN: GROUP:** (Laughs)

18 **UNKNOWN:** That's what it is, his tool box.

19 **UNKNOWN:** Did the guy show up or did you get her done?

20 **UNKNOWN:** Yeah, Traver did it. His nephew used to do inground pools.

21 **UNKNOWN:** A: Are you going to work at Traver?

22 **UNKNOWN:** No, why?

23 **TRACEY:** Their hiring.

24 **UNKNOWN:** He calls. Jaime came over. I borrowed his dad's laser and cutter.

25 (Group chatter)

26 **UNKNOWN:** Yup... ok... next morning.

27 **UNKNOWN:** Morning guys.

28 **UNKNOWN:** Morning Bill

29 **UNKNOWN:** Morning Bill

30 (Shuffling noise)

31 **UNKNOWN:** Bill, Bill. (Laughs)

32 **00:03:45** **UNKNOWN:** Is your back fixed, Bill? No?

33 UNKNOWN: Wear some fucking work boots.

34 UNKNOWN: These are more comfortable.

35 UNKNOWN: You trip, it'll blow your slippers right off.

36 UNKNOWN: Fucker fell down the stairs. Blew the slippers right off him.

37 (Group laughter)

38 UNKNOWN: See anything down there in the lower light you might want to buy? The ole

39 douich or anything?

40 UNKNOWN: Nah, I don't need no douich.

41 UNKNOWN: That's the same village as your 4 wheel drive.

42 UNKNOWN: Yup. Oh, it is.

43 UNKNOWN: Is it running alright?

44 00:04:30 UNKNOWN: Yeah, good.

45 UNKNOWN: Did you plant weeds like everybody else did?

46 UNKNOWN: Well we didn't necessarily plant em, but River Valley took their sweet time

47 killin' em. (background conversation inaudible)

48 UNKNOWN: Your guys hills look as bad as the ones at moons?

49 UNKNOWN: Actually our hills don't look bad...

50 UNKNOWN: What's up Carter?

51 UNKNOWN: ...until River Valley came through and ruttetd everything up.

52 UNKNOWN: Where Billy lives there its awful. Its sporadic.

53 UNKNOWN: All the bottoms are, like, three weeks behind it so.

54 UNKNOWN: Good morning Tracey.

55 UNKNOWN: What's going on.

56 UNKNOWN: Its nice out.

57 UNKNOWN: Yeah.

58 UNKNOWN: We'll see here in a couple months what it looks like.

59 UNKNOWN: I like the orange, I don't really like the yellow.

60 00:05:32 UNKNOWN: I saw a picture on fb they did fireworks and shit for the fourth of July. It

61 looks pretty nice.

62 UNKNOWN: Looks like a damn war zone.

63 (Group chatter)

64 **00:06:49** **UNKNOWN:** There's tools in my toolbox now I haven't used in two years but before
65 they were everyday tools. Like that time that pull up bar, that pull up bar snapped in-half.
66 And we're like. I don't know what we did here boys.

67 **UNKNOWN:** Or the time we blew the door off the side and rocks started flying out.

68 **00:07:10** **UNKNOWN:** Yeah, Bretts like "what do we do? "and I'm like you shut the feeder off and
69 stay the fuck away from it. I ain't getting near that thing. Yeah climb up there and turn the
70 clutch off. Its right behind the door. Yeah, no shit. Stay away. I asked the nursery about
71 that and they kinda scratched their head and... wait until it runs out of diesel. The thing
72 with run for 15 hours! I was like, if something catastrophic happens, how are you
73 supposed to shut that motor down? The clutch is right behind the door. 200 gallon tank.

74 **00:07:54** **TRACEY:** Come up across the hill and see whose working inside there.

75 **UNKNOWN:** I don't see anybody workin'. Sattin around drinking coffee and eating
76 doughnuts.

77 **UNKNOWN:** She's a big gal, don't get me wrong.

78 **UNKNOWN:** Hey, is our little Pickles comin?

79 **UNKNOWN:** Workin' on it, we'll see what happens. Time will tell. It didn't turn all the
80 way.

81 **UNKNOWN:** Huh? We'll see. I think she's got an appointment Thursday. So, I gotta pick
82 up the ride. Yeah I don't know where I'm at Thursday but I might have to leave a little
83 early.

84 **UNKNOWN:** Not acceptable.

85 **UNKNOWN:** I can pick the kid up and bring him back, give him a shovel.

86 **UNKNOWN:** 4 day weekend and now you want a day off? What the hell.

87 **TRACEY:** Uh-oh, boss is here.

88 **UNKNOWN:** No more cussin' in front of the lady.

89 (Laugh)

90 **UNKNOWN:** She cusses worse than us.

91 **UNKNOWN:** I know.

92 **UNKNOWN:** Hope that party was good last night. That we all got invited to. And then
93 uninvited

94 **UNKNOWN:** Yeah, what's that all about?

95 **00:09:29** **UNKNOWN:** You texted all of us, huh?

96 **UNKNOWN:** Everyone.

97 **UNKNOWN:** Hey just got back from the shop, want me to head over to your house? I'm
98 still working man, but if you really want you can come over.

99 **AMBER:** No, he had to get a hair cut, that's what it was about.

100 UNKNOWN: Alright everybody to the party. No, no, not you guys. Yup, carry on.

101 UNKNOWN: I texted him back. I said, don't forget the KY and anal beads.

102 00:10:00 AMBER: So, whose got water in their cooler?

103 UNKNOWN: I got water in my cooler. I got, I got ice in my cooler.

104 AMBER: It's better than what I got.

105 UNKNOWN: Kenny Joel will take care of ya. He's got cold water.

106 UNKNOWN: They were supposed to cater fuckin' steak & eggs this morning.

107 (Laugh)

108 UNKNOWN: What's up Amber?

109 AMBER: Good morning, how are you Bob?

110 (Group chatter)

111 TRACEY: That's the worst coffee ever made. This much coffee and this much

112 Styrofoam. Taste like Styrofoam.

113 UNKNOWN: Yeah we waited on the front porch like puppy dogs.

114 UNKNOWN: Just enough, just enough. Got the four wheelers runnin.

115 UNKNOWN: Hey did it run better?

116 UNKNOWN: Yeah.

117 UNKNOWN: He ran it a shit load the last couple days. so.

118 UNKNOWN: Good. That's what we got it for.

119 UNKNOWN: Well I guess if you're out there by yourself...

120 UNKNOWN: ...He's got two dogs...

121 00:12:48 UNKNOWN: If I was Boo, I'd just give it to the neighbor.

122 AMBER: He's probably still thinkin' about that.

123 UNKNOWN: ... about what's in that frigerated

124 JOE NEEDHAM: is everybody ready?

125 UNKNOWN: I don't know, I'll ask.

126 00:13:12 JOE NEEDHAM: Hey guy, this is Bill Wheeler. He's gonna explain some shit that I

127 didn't even know about this local thing.

128 UNKNOWN: You got anymore packets, Joe?

129 JOE NEEDHAM: What's that?

130 UNKNOWN: You got anymore of them packets?

131 BILL WHEELER: You got another one there, Joe?

132 **JOE NEEDHAM:** You guys can share.

133 **BILL WHEELER:** No, everyone needs to get their own here.

134 **TRACEY:** Defendants, yeah?

135 **00:13:51** **BILL WHEELER:** Good morning, gentlemen.

136 **UNKNOWN: GROUP:** Morning.

137 **BILL WHEELER:** As joe said. my name is Bill Wheeler. You wanna say something?

138 **JOE NEEDHAM:** I don't care.

139 **BILL WHEELER:** No, no go ahead.

140 **JOE NEEDHAM:** Ah, you guys all know what happened here. And first thing I want to

141 make perfectly clear, I'm going to do everything legally possible not to let this happen.

142 Bills gonna explain how bad that's going to screw raises and all that up. In a little bit.

143 **BILL WHEELER:** Could, could

144 **00:14:21** **JOE NEEDHAM:** Ok. Uh. There's a lot of things to it and, 150. Marshall Douglas and I

145 were very good friends at one point in time. 2015 he threatened me with Kurt's benefits.

146 That's what started all of this, way back then. In 2015, over the crushing deal, we come to

147 an agreement. Ryan Drew and Marshal Douglas sat right, Douglas wasn't there cause I

148 called him a fucking liar to his face at the meeting, he never showed back up. Uh, Drew

149 told me when we signed the crushing agreement in 2016, that Kurt's benefits were off the

150 table. They could not come back after him. Just so you guys know, I'm in federal court

151 right now over Kurt's benefits for over ½ million dollars. ½ million dollars they fucking

152 lied to me about. So, that's why we're going to do everything legally possible to make

153 sure that we can avoid this. Cause I'm telling you right up front. I shot with Marshall

154 Douglas, you cannot trust a word out of his mouth. You have to put it in writing, you have

155 to get it in writing, and you have to get it in writing again. You cannot trust a word out of

156 him and if he comes in here today, I'll call him a liar to his face. And it's you guys, it's

157 just a fact of life. Ryan Drew is no better. Ryan Drew told us that there's no way that they

158 can get to me through Kurt's benefits after we signed that agreement in 2016. So, before

159 you guys make any kind of decisions, you better know exactly what they're givin' ya.

160 Cause they're a bunch of liars. The only thing they want is to break Joe Needham, and

161 Needham Excavating. That's all they want to do is break me. Keep sending me to court,

162 keep me spending more lawyer money. They could give a shit less about one of you guys.

163 Not one of ya. Ok. Marshall proved that to me when he lied and come back after the

164 benefits. Ok, just so you guys know the type of people that you're trying to get involved

165 with. And everybody. So. I mean. You guys got any questions about that? I got the

166 agreement at home. If anybody ever wants to see it. But just remember, they're trying,

167 they're using you to get to me. Bill brings it up. Later on, that was the old teamsters, uh,

168 method. They want to break the company so they can use 'em as an example not to do it

169 ever again to somebody else. And that's exactly what they're trying to do here. In lawyer

170 fees and costs. Ok, if you guys got any questions about anything I said, you can ask me.

171 And if one of them guys walked in here today, I would tell them exactly the same thing.

172 And they cannot stand there and deny one word of it. Unless they're gonna lie again.

173 **BILL WHEELER:** Well they're not coming in cause they're not allowed in the property.

174 **JOE NEEDHAM:** No, right.

00:17:30

BILL WHEELER: Morning gentleman. As Joe said, my name is Bill Wheeler. I serve as a labor consultant. I'm not an attorney. Um, background wise, I'm out of Columbus Ohio. Where the Navy help through Ohio State about 100 years ago. And as a result, I served as a Naval officer during Vietnam. I went through what's called the Naval ROTC program the reserve officers training corp. program, but I never saw a moving officer a gentleman. I went through the same type training to qualify, while I was still going to college. When I got out of the Navy, um, I went to work for a variety of companies in human resources. I currently as a consultant, represent upwards of 50-60 companies. Represent all the of National Leashes companies. All of National Freight, NFI, Operations, you see their trucks on the road. I represent Sara Lee, I represent just a variety of different companies, and when I say I represent, not being an attorney. I have to file a report with the Department of Labor that permits me to do what I did. And uh, because of that report, and because I've been doing this work for, seems like about 30 some years. I monitor bullshit you're lied to. I'm sanctioned to do what I do. I'm going to do everything to give you the information possible. so that in three days you can make an informed decision. This is your meeting, and anything you wanna say and anything you want to talk about, as long as you're respectful to each other, that's why we're here. I'm also not here, to give you a whole bunch of stuff, some of it you have in front of you, that maybe you're not going to understand. Other than the fact that uh, I represented with the teamsters for a long time, as a consultant. I worked for a guy named Jackie Presser, who then became the International President of the Teamsters, HBO still runs a TV show about him, call Union Boss. Jackie taught me a lot about unions. Back when I represented the Teamsters, the Teamsters were they largest and most powerful union in the world. Do you have any idea today what union is the largest union? It's the service employee union. the SEIU. Um, people that uh, a lot of people who do janitorial chores, and some people who do a meaningful job in nursing homes if there is such a job. I have a lot of respect for nursing homes, my mom went through 14 years of Alzheimer's in a nursing home, so I would never try to discourage them of their people there. Um. I'm here today to try and answer questions. But the more important to let you know all that could happen, if in fact the union wins this election on Friday. Um. Unions are a business. And unions today are desperate for money. They'll do anything that they can to get money. And they want Joe's money, but more important, they want your money. Because it's dues and membership that keeps unions going. And unfortunately, a lot of unions have fell on hard times. Steel workers are a good example of that. Steel workers used to be, a very, very powerful union. They had to merge with 5 other unions just to save the union. So now it's not just the Steel workers. It's the Steel workers, the Paper workers, the Rubber works, the Illi industrial workers union. All those are together to make the Steel workers today. And other unions have merged together on the same basis. Used to be you had the retail clerks union and you had the meat cutters union. Now it's the united food and commercial workers union. They had to merge to be able to save the union. and when I say save. When I worked for the Teamsters, I learned two things from Jackie Presser, ok. He said Bill, we don't care what people make in their wages. He said we want two things. we want everyone to have to belong, call the union shop, and we want the company where that union is to deduct dues every month from people's paycheck the first of the month and send directly to the union. And they said, if we can get those two things on agreement on the first contract, we don't care what else the contract calls for. But he also reminded me that the union and Joe alluded to it early. If the union cannot organize your contract, they will just sue you everything they can until you shutdown. Because that would be one less non-union company they would have to try to compete against. And that's their philosophy. And Joe is right, they could give a shit about you guys. They don't care. Um. They'll say, well you saw what we did to Needham, because they didn't play ball with us, and we'll do the same to you. And that's why

226 unions are in such trouble today. Out of 100 % of the workforce that could be in the union,
227 in the private sector, which is what you fall under. Do you have any idea of what
228 percentage are currently represented by unions? Only 6.3 %.

229 **00:22:30 BILL WHEELER:** That means over 94% of the workforce today does not have a union
230 and those people do not have to pay to go to work. Because that's exactly what you could
231 have to do. If the union wins this election, it gets a contract. You will start having to pay.
232 every month, money gets taken out of your first check every month and gets sent directly
233 to the union. If you can't pay your due, by the 7th day, you're fired. Could be the best
234 operator this county has. And not only will we say we have to fire you, the union says we
235 have to fire you. And its written in the contract and all the union wants to know is the
236 persons taking your place, and they'll start deducting money from that person. Starting
237 with an initiation fee.

238 So, union is a business, they want money, and they need money desperately. As far as
239 union representation. If you bring in the public sector, like teachers, police, fire,
240 community service type people, its only 11 % that are totally in the union. So, I will be the
241 first to admit, that there was a time in this country when unions did a lot of good for this
242 country. Unions are responsible for a lot of the safety regulations you work under. They're
243 responsible for eliminating sweatshops. They're responsible for getting contracts that
244 basically rewarded you for performance but with all due respect, that was your
245 grandfather's union. Today's unions are not even anything like that. Today's unions are
246 just trying to hold on to the union. And what they have. Now I'm gonna share some
247 information from their last years financial statements with you. Joe has copies that he can
248 give you later, we just didn't want to burden you with all this stuff, which lists all the
249 money that they pay out to their officials and officers and stuff like that. Fucking a lot of
250 money. You don't have to be part of it, your money's vital. You don't have to have 50-60-
251 70-80 dollars a month taken out of your check and send directly to the union, I'm sure
252 your money, that you can spend that money a lot better than having it sent to a union. But
253 I'm also here not to deny anybody the right to a union. The law say, the National Labor
254 Relations Act, that yes, you have a right to be represented by a union. But it also says you
255 have a right to refuse or refrain from being represented by a union. Now its by
256 understanding that you guys got rid of this same union a couple years ago. Is that correct?
257 Are a lot of you still here that were in that union? Ok, so you know what this unions about.
258 And you know what they did and didn't do for you otherwise you probably wouldn't have
259 gotten rid of it. I can tell you, a lot of employees today are doing exactly what you're
260 doing. And that's decertify their union. Or voting it out. I just worked a case against some
261 teamster guys that are beer truck drivers. Up in Northern Ohio, they had the union for
262 about, its been in their company over 60 years. Well they just voted to deauthorize them.
263 And that means that they just voted to stop paying dues to these people. Cause the union
264 kept raising their dues and they weren't getting anything for it. And that vote was 100%
265 against the union. The union didn't get a single vote, and it represented those guys for a
266 long, long time. In fact when we did a meeting with them just like this. One of the stood
267 up and said, I don't care what you're gonna say I don't care what y'all says, if we can't
268 stop paying dues, I'm outta here. Cause he said, I've had it. So, two weeks after the guys
269 voted and the vote became official. The union picked up their football and went home and
270 said well we're not going to represent you anymore if don't want to pay us. So, I'm
271 surprised it didn't do that here. But you all got rid of it so it wasn't a situation you were
272 still in the union. These guys are still in the union. The union still has to honor that
273 contract and the company has to honor that contract. Well they don't now cause the union
274 walked away. Anyone have any questions about what I've said so far? And by the way, if

275 anything I'm saying, if you either disagree or don't understand ?, I'm not here to hear
 276 myself talk. This is your meeting and for you to say what you want. Of you that had to be
 277 in a union, in a former job or not. Would any of you want to volunteer what your
 278 experience was? Was it a good experience, was it a bad experience? I mean obviously it
 279 wasn't a good experience here or you wouldn't've gotten rid of it.

280 **00:27:10** **UNKNOWN:** I was a teamster for 10 years of my old job.

281 **BILL WHEELER:** Ok, and where was that, sir?

282 **UNKNOWN:** It was some company in Iowa.

283 **BILL WHEELER:** Ok.

284 **UNKNOWN:** And we got bought out and didn't really do anything for us. Just come
 285 down and sign the books.

286 **BILL WHEELER:** You were paying some heavy dues.

287 **UNKNOWN:** Yeah, absolutely no re-hiring.

288 **BILL WHEELER:** That's the sad thing.

289 **UNKNOWN:** The, 150 came down and said the same thing. Said we'll take you guys on
 290 and, went down and signed the books there. I gave them my initial start up fee or
 291 whatever.

292 **BILL WHEELER:** Initiation fee

293 **UNKNOWN:** Initiation fee and sat on the books forever and that was... I got the call
 294 from Joe and... come drive a truck for him and I was only without a job for 2 days. And it
 295 wasn't until several month later until 150 found out I was working for Joe and then all the
 296 sudden they wanted me.

297 **BILL WHEELER:** Well joe doesn't like that 150 would like to bust this company if joe
 298 doesn't want to play ball. And uh, that's what makes it so sad and they would be using you
 299 guys to try to do it. Terminate your own job, and they can care less. Anyone else want to
 300 volunteer what their experience was or maybe their own family? Thank you for that. And
 301 you've had family in union or maybe yourself in a different union other than this union.

302 **00:28:31** **TRACEY:** I've had a lot of family that's just, you know, dead. Dead set union. That's just
 303 how life is down there. And you know my dad is, caterpillar for years. Soon as he retired,
 304 you know, two years strike. Damn near, he retires, couple years go by start blowing
 305 benefits. They start blowing benefits. What's he gonna do, strike retired? That's what I
 306 told Aaron the other day. He just had to keep, take it, take it and take it.

307 **BILL WHEELER:** Who Peoria? Fiori?

308 **TRACEY:** Yeah... so. Worked all these years for something that wont even stand up
 309 anymore you know.

310 **00:29:11** **BILL WHEELER:** UAW the on that bought out General Motors and Chrysler. UAW
 311 took out a new contract, after that whole buy out occurred. They took almost all the
 312 benefits away from the retirees. Literally throw them under the bus that they literally built
 313 if you think about it. And reduced the wages from 28/29/30 dollars an hour down to 15/16
 314 dollars an hour. And agreed to it. Sure GM was gonna agree to it. Cause its half of what
 315 they were paying. And that's what can happen. So... you control in what you're doing in

316 your job now. You control not only how you do your job but obviously you do it well
317 working and to have the successful operation that you do. But you do control basically
318 what goes on in this company because you are Needham to your customer, and you know
319 that. Many of those guys probably don't know Joe. And maybe they do. But the way you
320 do your jobs and they way you present yourself, the way that that customer depends on
321 you to do quality work. I'm sure you have other competition, don't ya? And the
322 competition could get that work but no, they give it to you because you know the
323 reputation that you built. Your customer does not expect you to do anything that could
324 interfere with that. And a union could. When Joe contracts to do what he does. He's
325 contracted to do that work as a non-union company. Isn't that right?

326 **JOE NEEDHAM:** Yes.

327 **00:30:51 BILL WHEELER:** And so, when your customer hears union. They think of two things,
328 they think that Joe might have to raise his prices cause they know its going to cost him
329 money to have a union but worse than that, there could be work stoppage. And the union
330 could just ask you to walk off a job and take a strike. Now they have to give you a right to
331 vote on a strike but they could have as many strike votes as they want. But your customer
332 that knows that. And they basically hire your company to do a job that you're on a time
333 limit with, like uh, what I think Nick you were talking about, doing a job out for the
334 schools around here. Where you have to get something done by what, middle of August?

335 **NICK:** ?

336 **00:31:21 BILL WHEELER:** Yeah, when they hire you to do something like that. And they know
337 that a strike could stop that. Ask yourself, it's a rhetorical question. Are they gonna hire
338 you, or are they gonna hire someone they know that there's not going to be a possible
339 work stoppage. And those are the kind of things where you would lose control over. You
340 don't have that control. Yeah you could go in there and strike, but then a union, if you're
341 already in that union. Has the right to pick up that football and go home with it. Well
342 that's the only gun to Joes head is a strike. So If you're not going to take a strike then you
343 don't want any part of the union. Which, once again shows that they only care about the
344 union. In the end its for the union and the image of the union, not what you represent for
345 the customer. Gentleman... Ladies and gentleman. Excuse me ma'am.

346 **00:32:17 AMBER:** It's ok, I'm not sensitive.

347 **BILL WHEELER:** Well I had the pleasure of meeting you yesterday. Well some of you.
348 And I get the opportunity to meet the rest of ya. You know, you're in a situation here
349 where the union was just kinda... sit back and wait to see what you guys wanted to do.
350 And.. They're gonna make you all kinds of promises. They're like a politician. Tryin to
351 get our vote. They're going to promise you anything and everything to get you to vote for
352 them. But you guys already been a victim of this union years ago. And ask yourselves.
353 Why would you ever want to do that again? And why would you ever want that to happen
354 to you as a person in your family. And, it's your customer that writes your paycheck. Its
355 your customer that pays Joe, so that that money goes in your bank account. He doesn't
356 front it, at least I don't think he does. So, if your customer doesn't expect you to have a
357 union, and that's who writes your paycheck. I mean, connect the dots guys... So, your
358 competition, that doesn't have a union, is already out there. Probably contacting some of
359 your customers and telling them, well Needham's gonna have a union so why don't you
360 give us a chance at this point. And that's where you lose total control, that's where Joe
361 loses control over the situation. Because all he can says is well yeah, were supposed to
362 have a vote on Friday and the union comes in, long time to get a contract but probably end

363 up with the union. So that's what this could happen, that's what this is all about. And I'm
364 here to try and show you that because of this Joe talked about lawyers. I used to represent
365 a trucking company outside of Ohio. They had 50 truck drivers. Very, very successful
366 company. And um. The guys voted the union in by 4 vote. And we bargained and
367 bargained and bargained, but back then I used to be able to bargain contract. I can't now
368 because I'm not an attorney. We bargaining session... we bargained for 39, pardon the
369 expression, fucking months. We never got a contract, Most of the drivers quit because we
370 couldn't change anything in the job. We couldn't change the job, we couldn't give them a
371 raise, better benefits. Everything was stable for 39 months. Except the customers because
372 we had a lot of the drivers the customer knew quit. And they didn't want new drivers
373 doing there stuff for them. So we lost most of our drivers. The only people who made
374 money were attorney because of the legal fees. And that time, for this world is a small
375 company, were well over a million dollars. And the company went bankrupt because they
376 didn't have the money... does that window open, I was gonna say we can let that bird
377 out...

378 **NICK:** No, its gotta go out this one.

379 **BILL WHEELER:** Oh ok. Um... so they went bankrupt. They didn't have the money to
380 pay their lawyers. Right now, Joes already, we met with attorneys all day yesterday. We
381 talked about what could happen here. And this lawyer that represent your company knows
382 this union like the back of his hand. I don't know much about this union, I'll be honest
383 with you. Operating engineers, I don't know in a area like this, might not be that strong
384 today. But they sure have paid a lot of money and I can share that with you in a minute.
385 That money is obviously from dues money, that's where they get that money. Dues and
386 initiation fee. And one of those campaign promises they may make to you is, well you if
387 vote us on Friday. You, the 15 won't have to pay the initiation fee. But everybody that
388 comes in after you will. And you don't have to pay dues until you get a contract. But once
389 you get a contract, like is said those dues has to be deducted the first of every month. And
390 sent to the union. Obviously if you don't have the money to pay the dues then you, what is
391 called "fall out of favor" with the union. And what that means is, if you're not current with
392 your union dues. Then the union won't allow you to be put on any type of a job list out of
393 the union hall. And basically, would invalidate your Local 150 union card or whichever
394 they decide to give you here. Also, if you take that work stoppage like a strike, you have to
395 pay dues while you're on strike. And if you can't pay those dues then once again, the
396 union will not allow you to be put on the work schedule. If the strike is over, until you are
397 current with your dues.

398
399 **00:37:33 BILL WHEELER:** Now I'm sure the union will never tell you that cause they don't
400 want you to know that. All and all you know what has motivates you to continue to work
401 here. You came in and asked Joe for a job. Or maybe Nick for a job. They hired you. They
402 tried to keep you working as long as you abide by the rules of the company. And as long
403 as you don't fracture those rules. Ok. That's what keeps you working. That's the kind of
404 trust that they gave to you when you came in and presented yourself to them to get hired.
405 And they didn't know you from anybody else. Now, Joe is asking for the opportunity, and
406 Nick and Kurt, for the opportunity for you to return that trust to them. By basically
407 sending this union down the road. And you have 3 day to decide if you're going to do it.
408 You basically, when you bring in a union, you fire them. You take away your ability to go
409 to them on a day to day basis. Kurt's not here but either Nick or Kurt or Joe.

410

411 **JOE NEEDHAM:** And Boo, yeah.

BILL WHEELER: And boo. And you hire and pay a union to try and come in and get you more. Or even the same what they have provided for you without you having to pay for it. That's basically what you're doing and they have at least a year once the election to try and get a contract that does that. If they don't have a contract after a year, you have a right to call for a decertification vote like you did when you voted them out before. But if you don't call for that vote, you have to continue to bargain until you get a contract. During that whole period of time you fall under what are called the laboratory conditions of the National Labor Relations Act. And I'm gonna share some things with you from this book. What that means is that we can't change your pay, we can't change your benefits, we can't change your job until you get a contract. That contract, in the end, yeah you could end up getting more. You could end up with the same, or you could end up getting less. But even if you end up with the same, you're going to end up with less because the dues you gotta pay dues out of that. So this is about trust and who are you gonna trust and obviously, you must have trusted somebody here or you wouldn't still be here. You know the need for good people today in any industry it's harder to have to find people. I told you I represent uh A-9 Shalese but I also represent National Freight, they're in NJ but I also represent a lot of their operations in Southern, California. Um, they have a big operation out of Bolingbrook, Illinois I represent that operation. Do you realize that to hire an over the road truck driver, whose jobs pay well over 100,000 dollars a year. They have to go through 8 people to find one person who can pass a drug test. To put behind the wheel of that truck. So, when I say there are jobs out there, employers are looking for people such as yourselves. That haven't become addicted to something. That their insurance company will allow them to hire. Because that employer obviously obligates that whole company by putting that individual behind the wheel of that vehicle. Just like Joe, and Nick, and Kurt trust you with their equipment. Same type thing. And it only take one major accident for your insurance carrier to either start raising your rates, or worse than that, just drop you and say no its an unsafe situation. Have to find somebody else to insure you. Once again, that's losing control of the situation. Put this calendar behind. Do you any of you have any questions do you understand what I'm saying? This is some serious stuff here. And um. I hope I'm not trying to give you too much information but like I said earlier. We want you to have all the information available to make an informed decision. Joe said a few minutes ago. Myself as an agent of a company or attorney we're going to do everything legally possible to prevent this from happening cause we know what could happen. Because we've seen it happen to other companies. You guys, like I said were already victims of this once. Here's the rest of this year and all of next year. Here we are on the 9th and on the 12th you have a... you have a.

00:42:29

BILL WHEELER: Now there are 15 people, whose names that the attorney are going to turn in for the NLRB today to vote in this election. And what's so bad about. Up until uh when Obama became president, which that was not a political statement. Up until when he became president the list that a company had to give the NLRB had your name and address. By the way, normally your company would never give even that out to anybody. Because when you fill out an application here. It on the application that you sign that company will hold all this information in confidence. But the government makes us give a copy of that to the union. But now, since Obama. Not only do we have to give your name and address. We have to give your job classification, we have to give your email address, and we have to give them your cellphone number. Along with your landline number if you have one. We never gave this stuff out. My experience with the Teamsters, when they get information like this, even your name and address, they just go sell it to everyone solicitor out there. To make money from those solicitors to furnish with your name and address. So even after all this is over, you start getting a lot more robo calls or a lot more people even

462 showing up at your door trying to sell something it's because we have to give this list up.
463 Now the 15 names on this list. Heck, ill pass it around if you want to see it.

464 **NICK:** Well, it's everybody here.

465 **UNKNOWN:** Pardon me?

466 **JOE NEEDHAM:** : Yeah 15 people. So you're all on this list. And, what's gonna
467 happen on the a, on Friday. NLRB is gonna send a representative. Here what in Peoria?

468
469 **NICK:** Yeah.

470 **BILL WHEELER:** Ok, I don't know whether it's a man or a woman but I have to be
471 careful when I say that today anyway cause sometimes were not sure so. I'll just leave that
472 alone. But whomever the representative is from the government will be here a half hour
473 before the vote starts and that is. Joe and I just posted the election notice in your shop
474 yesterday. It's a 4 part notice and it has a sample ballot in the middle of the notice. So,
475 review that and look at it. The only thing that I would ask is to not mark anything on it.
476 Because if anybody defaces it, we could end up having to go through this all again. But it
477 says the date the time and the place of the election. It say, everyone that was on your
478 payroll. The 15 of you, as of June 29th , get to vote in this election as a operator. It
479 descripts all the points eligible to vote. All full time and reg parttime heavy equipment
480 operators. The date the time the place is from 7-9 a.m. it will be in, what is that the parts
481 room down there?

482 **NICK:** Yeah

483 **BILL WHEELER:** Parts room located at 137 N ?. So from 7-9. You're gonna have the
484 right to go in there and vote. And the Labor Board representative will be there to take your
485 ballot and there will be 2 of you in that room with the representative from the government.
486 So that you can identify people when they come in to vote. So joe has the right to ask one
487 of you to be Needham's representative to help the governments representative run the
488 election. Now that doesn't mean that's how you have to vote. Even Joe represents-
489 designates you as the company representative. L150 has the right to ask one of you to be
490 their representative to vote to help the government that doesn't mean whoever the union
491 asks, first of all, you don't have to accept the responsibility, you only really have to have 1
492 observer, as opposed to 2. So, if none of you want to help the union in this, you just say
493 no, I don't want to be your representative. Um. The big thing I want you to understand is
494 whether your company representative or union representative that doesn't mean that you
495 still can't vote for the other side. I mean it's a secret ballot election. You can go in there
496 and sit in there with the company and still, when they give you the ballot, you can vote yes
497 for the union if you want. The unions representative. Joe is not allowed to pay during this
498 time of this whole process. Because you're not allowed to lend assistance to the union.
499 Even though that persons not in the union. So anyway, what will happen is, you go in the
500 parts room. Nick, were you the one that told me they had that place locked down for a bit
501 last election? It'll be the same thing, it'll be a restricted area. They're going to give you a
502 ballot. First of all, they're going to check your name off of this list to show that you voted.

503 **00:47:30 BILL WHEELER:** Then they're going to give you a ballot. You're going to take this
504 ballot. And it says, do you wish to be represented for purposes of collective bargaining by
505 International Union of Operating Engineers, Local 150 AFL-CIO. And you're going to go
506 in a little voting booth that they'll set up for you. And then you'll mark in either yes you
507 do want the union or no you don't want the union. Don't write anything else on here cause

508 it won't count. If you don't understand it. Turn it over and write yes or no on the back.
509 Once the vote is over, at 9 o'clock. And by the way its 7-9 but you can only vote once, this
510 isn't Chicago. So understand guys that's your only time to vote. That's the only time you
511 can vote. You can only have one election. To have an election again it would be sometime
512 in the middle of July of next year. So, whatever that vote is, the union has the right, to
513 have their representative come back and watch the count. In fact half an hour before the
514 vote 6:30 there will be a pre-election conference. The union has the right to have their
515 representative there for that. Along with the company attorney maybe Nick, Kurt. Joe, you
516 know you have the right to be there. I would discourage you from being there but that's up
517 to you. You can watch then count the votes. So anyway you have this pre-election
518 conference. And the two observers have to be there for the conference too so the
519 government can explain to you what your role will be. And you have to be in that whole
520 thing for 2 hours. Now if you have to use the restroom in that two hours then the
521 government will let you leave to use the restroom. They'll just shut the poll down until
522 you come back. So you watch the votes. So there's 15 people who can vote. Now, the
523 union may decide, even though they agreed to the election. And they have agreed that we
524 will furnish this information. They may decide that some of you on that list should not be
525 allowed to vote. For one reason or another. That doesn't mean your votes not going to
526 count, that just means they're going to challenge your vote. When you come into vote.
527 And, you know the attorneys were talking about that yesterday. So, there are some people
528 here who you think the union may challenge, is that correct.

529 **NICK:** Yes.

530 **BILL WHEELER:** Just without getting specific wit names. Why would they be
531 challenging those people?

532 **JOE NEEDHAM:** Work classification.

533 **BILL WHEELER:** Work classification, ok. If that happens, that means they'll take your
534 ballot they'll put it in a yellow envelope, put your name on it and then stick it in the ballot
535 box. And they way that that vote would not be initially counted would be if the disparity
536 between the yeses and the nos votes is so great that those envelopes wouldn't make a
537 difference. There's 15 people that can vote. So that means that either side is going to need
538 8 votes or more to win. If there's 15 people that can vote. If it were an even number
539 opposed to a crooked number. Like if there were 14 people. And it were a tie, 7 to 7 then
540 there would be no union. You need 50% plus 1 to win. So if for some reason, they're
541 counting these votes and they're are 2 or 3 challenges in there. And the vote is
542 overwhelmingly no against the union or overwhelmingly yes, for the union. Then those
543 challenges, even if they're counted would not make a difference. Usually the challenges
544 would make a difference though because if the union is challenging you its because they
545 think you would be rooting for your company. And they want try to take that right away
546 from you. While your attorney is there to make sure that doesn't happen. If there are
547 challenges, and there is not, if there, if the vote is that close, you will probably not know
548 the result of that election until sometime in maybe October or November. Because
549 challenges have to be resolved at hearings and the union has to prove to the government
550 why they didn't think your job classification, you shouldn't have the right to vote. Ones
551 again here the union with you trying to take rights away from you. That you should
552 normally have, but that's the process. So, you come in to vote on the 12th, the union and
553 the company have 7 days after the vote, w/e the outcome to follow called objections to the
554 election. If no objections, the election becomes certified on the 19th . So that means. Say
555 for your purposes, the union wins this election. Well, what happens. That means that you

556 have voted for the union to be your representative with respect to wages, benefits and
557 working conditions. You're not in the union until they get a contract. Now, you can start
558 joining the union if you want, and you can start paying the union. They'll give you one of
559 these cards. And that's the first thing, well I guess the first thing is healthcare so. Lets go
560 to the second thing that says type the cards. As you probably noticed, all unions used
561 union cards when a person becomes a member. They may give you some type of card
562 cause you're paying union dues, and that's your right. That still doesn't mean that the rest
563 of you are in the union, cause one or two of you are. Whatever you decide if you want to
564 start paying. And that's what that types of local union cards, and if I were you I would ask
565 them. Well if we do win the election and we do want to start paying you, what type of card
566 am I gonna get. Once again that's for them to answer that question. But we're giving you
567 that handout so you can share with your family.

568 **00:53:28 BILL WHEELER:** So, the union wins, they win the right to start bargaining to get your
569 contract but when does this bargaining start? A year or so. This is the first time. This is not
570 like you had the union before and you went from one contract to the other. When you were
571 teamsters, if you recall when your one contract would run out, you would start bargaining
572 where the last contract left off. Isn't that correct? Yeah, type thing. Well, that's not the
573 case here. Everything that you now have in wages, benefits, working conditions, can
574 become negotiable. That bargaining normally starts on the first contract a month and a half
575 2 months after the vote is official so that means bargaining will probably start sometime in
576 September. And that means that the union would have to September of this year, all the
577 way down to September of next year to get you a contract. During that period of time is
578 when Joe can't change anything. So if you're scheduled to get a raise, the lawyer won't let
579 him give it to you. If you're scheduled to take a job change, same type thing. You can't
580 change anything, cause that would tamper with the bargain. That assuming that, that the
581 union there aren't a lot of challenges. That whole calendar would fall back. Meaning you
582 wouldn't start bargaining until the challenges were dissolved. So, it could well be the end
583 of next year. Before you could ever have the chance to make a choice on this again if there
584 are a lot of challenges. Does everyone understand by what I mean by that? So, if during
585 this whole process of bargaining. What goes on, if the lawyer, and the unions lawyer, have
586 to meet at convenient times. Its call the bargaining foe a contract... the collective
587 bargaining process. This book is a layman's guide that you go on the internet and skim
588 through it yourself. Look it up if you want. It's kinda in legal. Kinda not in legal terms.
589 Terms that you can I would know. It says collective bargaining the employer and the
590 representative of its employees to meet at reasonable time to confirm such faith about
591 certain matter and to put into writing any agreement reached and requested by either
592 parties. That's a contract. The parties must confirm good faith with respect to wages,
593 benefits, hours and terms and conditions of employment. These obligations are imposed
594 equally on the employer and the union. It is an unfair labor practice, meaning its against
595 the labor law to refuse. This is the key. The obligation does not however, compel either
596 party to agree to a proposal by the other, nor does it require a party to make a concession
597 to the other. So that means that in this whole period of bargaining, the union has the rights
598 to put all these different proposals on the table of what they want in the contract. And Joes
599 attorney has the right to say no. Joe and his attorney has the right to put proposals on what
600 they would want in the contract. And the union has the right to say no. That's why it takes
601 so long to get a first contract. In fact statistics show that 75 % of first contracts take a year
602 or more to bargain for. And sadly enough, the same statistics show that the majority of
603 first contracts represent less in wages and benefits than before the union was voted in. So
604 remember when I said you can end up within the same but you could end up with less
605 because you're paying dues. In fact the government put that in writing. Its called the coach

equipment company case C-O-A-C-H. Go on the internet and look that up if you want. That's cause it's a construction equipment company. And the decision that the government wrote in that case said that the collective bargaining process can be hazardous to employees because employees can end up with less. Once the process is over. So, I don't care what the unions telling you you're going to get. I'm just siting statistics once again. You're going to have to decide who you're going to believe in this. Now, during this whole bargaining. You get to end of this year or next year and they union know they have to get you a contract by September or you get voted out. Come maybe May, June next summer around this time. The union may say, well, Joe's attorney would like to bargaining, we're not getting anything out of this yet. We need to get Joe's attention. So, there is one gun that the union can try to hold to his head. To get him to agree to what they want. You know what that is? Strike. Now here's the before, the union doesn't have to give you the right to strike. But they do and can take as many strike votes as they want. If you do vote to go on strike, when you're on strike, you don't get a paycheck. Your benefits stop. You can't be fired for going on strike so you can't collect unemployment. They can't terminate you for being on strike. You can always go get a job somewhere. The union has in the document that I'm sure that they pay strike benefits to people. But you're not in a union yet. Those are only for member, you're striking without the union. In fact you become what is called an economic striker. And the government has a... say economic strikers defined. The object of a strike, to obtain from the employers concessions such as higher wages, shorter hours, better working conditions. The striking employees are called economic strikers. They retain their status as employees and cannot be discharged. But they can be replaced by an employee. This is the key. The employer hired bonified replacements who are filling in the jobs of the economic strikers when the strikers apply to stop the strike and stop the work, the strikers are not entitled to reinstatement at that time. So that means that if you drank the unions coolaide. And you voted for them, and you believe them. Everything they're gonna do for you. And you went on strike for them. They literally watch out for Joe. Because Joe and Nick and Kurt are gonna find somebody else to do what you're doing and then they keep that job. And that's what the government said. Now, I don't know how. That's why unions only represent 6.3% of the workforce. You represent yourself in your job today. You come to work and you work hard, and you get paid for it. Ask yourself. Why would you have to pay an outside organization that can't even keep a lot of their members working today, just to keep your job. Joe pays you. You should not turn around and pay the union. That's what they want. And the fear of all of it. And they're gonna say that they're gonna get you all this stuff. I mean, their healthcare is a perfect example and that's the first annote here. Says here, you started seeking healthcare insurance. First of all, it has to be negotiated in the contract. So he has to agree that you're going to receive it. But this handout, it, it basically tells you that the union welfare plan has a minimum amount of hours that you must work. And if you don't work that minimum number of hours, you don't get that healthcare. Well y'all don't work here. All year, or do you? Does anyone work here all year? Or you're trying to keep them working.

NICK: Trying to keep them working.

BILL WHEELER: Trying to keep them working. See that's the big benefit that you enjoy by not having a union though. Cause if you're in this union, you're gonna have job classifications that you can only work in. and if you had it before, at least I'm assuming you did. That means if work gets slow and that classification, or better yet gets busy in that classification. Joe can't pull you from another classification and have you do that work. If you're a truck driver, you're only pulling and driving a truck. If you're a operating

655 engineer then you can only be a operating engineer but not equipment operator, excuse
656 me. That's another fallacy that they don't really want you to know. So that, and they
657 dictate how much else are you gonna be able to have to do? And that's exactly what this
658 first handout says.

659 **NICK:** And, I'll add something to that. I know here, we're pretty flexible with what we
660 can do and that's the reason we get the hours we get, a year. So, like he said. You know, I
661 may do laborers work or do truck driving work. But I'm, I mean we're all getting over
662 2000 hours a year and I don't see any of us getting that many hours if we do go union.

663 **UNKNOWN:** Right.

664 **NICK:** So push it with the amount of people on the list and the out of work list right now.
665 But that's a benefit of a company like this. We're all flexible and move around and we
666 stay busy.

667 **BILL WHEELER:** And he has the right to do that.

668 **NICK:** Right.

669 **01:02:10 BILL WHEELER:** And that's why a lot of companies your size and even less than this.
670 Um. I was in a meeting just like this a couple weeks ago and I had a guy stand up and he,
671 guy has 4 kids. And uh. He looked right at the owner and said, Kevin kept me workin'
672 when none of my friends were working and that were in a union. Because he allowed me
673 to do other jobs that he trained me to do. And he says my kids would have starved if he
674 wasn't able to, and the guy started to cry. So, um. This could be an emotional thing. I had
675 another guy same situation. And he was a plumber and pipefitter. And uh, he was working.
676 Couldn't find any union jobs as a plumber and couldn't find and jobs as a pipefitter. So he
677 took a job at a lumber company that made custom cabinets. And he said this is a great job
678 for me. And he was a black guy and there were hardly any other black people in the, in the
679 meeting. There must have been. Eh, 7-8 people in the meeting. He said I'm not too proud
680 to tell you this but uh this company had literally saved my family. Because he said, finally
681 the plumbers and pipefitters called me about a month ago and said hey, we got a job for
682 you. We finally found a good job for you. And all you have to do is bring 1100 dollars in
683 back dues to the union and we'll let you in. and he said Mr. wheeler I didn't have 11 dollar
684 to take to them. Let alone 1100 dollars. But he said this company's hired me and kept me
685 working. So. Yeah union talks about all the work they're gonna have and all they're gonna
686 do for you, different cards they're gonna give you and the list that you're going to be on at
687 the union hall and whatever. But unions know that everyday you show up here, you don't
688 have to have a card. All you have to have is yourself and the ability to do that work. And
689 you've obviously done it or you still wouldn't be in it. I would think that that in itself is
690 the best job security that exists today. I mean what is secured today in the society that
691 we've created for ourselves. I'm just glad people like Joe needs an old guy like me to still
692 do work. Somethings wrong. I've been drawing part of the Social Security that I can draw
693 for a long time now. Sad part is I gotta pay full tax on it. So, an example. If ss pays me
694 \$25,000 for the last year that I worked. Remember this is social security that I already paid
695 on once when it was taken out of my pay. The government makes me pay almost 85% of
696 that back in taxes. That was Bill Clinton did that to us in 1980... 1994. That if you still
697 want to work, and you're 1000 years old. And you're taking that social security if your
698 still working, you have to pay almost all that back in taxes. So, you're all too young to.
699 Most of you probably won't even see social security. I hope you do. But you probably
700 won't. But it's a benefit for me cause hey I'm working. Hey I work for a large law firm as
701 a consultant. They pay me when I have work. Um they refer some work to me once in a

702 while, but I get most that work on my own. I got this Job because I saw the petition was
703 filed and I called Joe. and Joe said, well Billy, we went through this, a couple years before
704 this and they voted it out. And he said I don't know that I'm gonna need somebody like
705 you. But fortunately, he gave me the opportunity to be here. and I thank you for it. Um,
706 but the society that we work in today.

707 **01:07:00**

BILL WHEELER: We see how so soon somebody could take everything away from us
708 that we have. That is beyond our control. Why in 2 days... 3 days. would you vote for a
709 union which is can't win. Would start and do anything they can to try and destroy your
710 company that you work for. To bring him down. How would you explain that to your
711 families. And would you have the kind of hatred and dislike for this family that you would
712 even want to go there? That's... that's the choice that you're kinda making in all this. The
713 family. I don't know how much they help you. Most companies this size, if you go to the
714 owner for help, and you need something. Maybe you can't pay your light bill, I don't
715 know. Maybe bills just got real bad and your credit got bad and you need help with
716 something your child needs. The doctor bill that they don't have the money to pay. I'd
717 have to think that if they can help that they would and have. You're gonna take that away,
718 you're gonna take that ability away to go and have them? Do you really think that the
719 union would do that, that the union would do it? Of course not. They don't have to give
720 you family care. They don't know you. Other than the fact that you have one of them
721 cards. So I'm asking to keep inventory on what has kept you working here. Yeah
722 obviously the lord has blessed us all with our health or we wouldn't be here. Count on
723 that. And count on how, Nick just said that they have tried everything to keep you
724 working. Even if its not the classification or training your used to. The union does not care
725 about you. Trust me. Gentleman, I'm 77 years old, I'll be 78. I have seen it from both
726 sides for a long time. The union doesn't care. Teamsters. Like I said, when I worked with
727 them, they used to laugh about. They used to put people on trial. That would try to go to
728 managers or something. Because they wouldn't go to their union steward. You know
729 exactly what I'm talking about. It's in there by-laws. You have to go through a union
730 steward. Don't go to management for something. And the steward will be one of you. It
731 will be the person who was the strongest for the union to get the union in. That's who
732 you'll have to go through. And no disrespect to you but I mean. the steward that has to go
733 to management and has to say, you know. Such and such, needs a little help here. Can you
734 help him? It's like sending a messenger to borrow money from ya to for in the bank. If you
735 had to borrow money, to keep your family or to keep your house goin. Would you want to
736 send a messenger, or would you want that guy at the bank that your asking money for to
737 see the look on concern on your face? And the fear on your face that you may be losing
738 your house. Why would you send a messenger called a steward who could care less
739 whether he said yes or no. But I saw the Teamsters put their man on trial for going to their
740 manager for something. And if they got found guilty in that trial, they got thrown out of
741 the union. Well if they were working at a union shop means they got thrown out of their
742 job. And they would brag and laugh about it. When I used to go through the collective
743 bargaining process when I used to be a representative to try and get contracts, the
744 President and the Executive Vice President of that Local union and it would be me and
745 maybe sometimes another attorney, or an attorney. When the union guys sat down at the
746 bargaining table, they would take a 45 out and lay it on the table. Now, that was a long
747 time ago. This is back in the 80's. Just to show management they meant business. What
748 kind of shit is that? Is that the kind of people you want representing you? You represent
749 yourself, and your job and you know you have. You kept your job because of the way
750 you've done your job. I don't know how else to explain to you. The money that this union
751 has made. This... this is their financial statement from last year that shows the following

752 money that they paid out to all their business reps. Financial representatives. And in fact
753 the second page of this. and Joe has copies of this if you want to see it. The net assets for
754 this union last year was 121, 951.73. Million dollars. and maybe almost 122 million
755 dollars. In assets. The business representative who I guess is the guy that's probably been
756 talking to you guys. Was this Ryan Drew? Is that who? Ok. Yeah, he made almost 163
757 thousand dollars last. And if you're wondering to yourself, why is Joe paying an old guy
758 like me to come in here and work. I work for the hour and make just over \$200 an hour.
759 And that's if I'm working and I have to report that to the government. So all that's public
760 information. His lawyer I'm gonna guess he's paying probably over \$500 dollars an hour
761 cause most lawyers make over twice what I make.

762 **01:12:47 BILL WHEELER:** So. You don't have to pay for that guys salary. Take that money and
763 use it for your family. And to keep your family going. The last handout is know your
764 rights. we're gonna pass these out talking about wages. once again this is who you're
765 gonna trust. What I just read to you. That whatever way Joe pays you under a union
766 contract he has to agree to. Or doesn't have to. Neither side has to agree to a proposal by
767 the other. Or extend an obligation to... or uh... concession to. You obviously know, what
768 Joe pays you, keeps you and your family going. Like I said, that's gotta be the reason for
769 working here. I apologize on the part of the company that we had to give your personal
770 information. It's an invasion of your privacy. And don't be surprised between now and
771 Friday. The union may actually show up at your door cause they actually got your name
772 and your address.

773 (inaudible)

774 **BILL WHEELER:** Pardon me?

775 **UNKNOWN:** I said they better not.

776 (inaudible)

777 **BILL WHEELER:** Something that blew me away, I was in a meeting of people who
778 worked in a supermarket. There were two older ladies there that were obviously retired.
779 They were cashiers and they stood up and turned around to the group and said, if that
780 union thug shows up at my door, its locked and loaded. well don't hurt these people if they
781 show up. Ask them to leave. If they don't, call the police, they're trespassing. I apologize
782 we had to give this information out.

783 **UNKNOWN:** They not allowed to enter your property.

784 **BILL WHEELER:** They're certainly not allowed on your property even if they win this
785 election. Unless it something negotiated in the contract and that's something employers
786 don't want. The problem is, if they haven't already. They'll be showing up on your work,
787 on your jobsites. Trying to intimidate your customer because your customer already told
788 you it doesn't want a union around. And take it, if he doesn't have a union. Do you think
789 he wants that cancer coming around his people? But that's their intimidation. They might
790 show up with a pizza for you or maybe a bag of Mickey D's. Guys you're all better than
791 this, I mean you know that. You were a victim of this before. I can't think of anything or
792 any telegram that you can send more to Joe and Nick and Kurt. And when they count
793 those ballots. Because when they count the ballots, they're gonna pull the ballots out. And
794 there's gonna be a pile of yes votes, for the union, and a pile of no votes. I can't think of
795 any better outcome for all of you as that there is only one pile of votes, and that they're all
796 no. That sends a message to the union to leave you alone. Don't try to come back again in
797 a year, cause we don't want you. And it sends a message to each of you, and to your

798 owner that you don't know how anyone voted other than the fact that all of us voted no. It
799 won't matter how somebody voted yes or no. Because, hey you know the votes Friday in
800 the morning. Y'all have to go back to work together. But then there will be a winner and
801 there will be a loser. And hopefully it will be the union that lost. And you'll be
802 congratulating each other on how you got rid of this again. And did everything that you
803 could to try to keep this company, with not only the reputation that you have built it,
804 asking for. But that you're survivors of this. And you're not a prisoner of the calendar
805 here. This thing could hold the company up for years. The only person who gets rich out
806 of this is the attorney. Because you have to pay that guy to get all these different
807 bargaining sections. That money could go to you and your family. And that's not a
808 promise that's just the way it works. So. you can. you know what kept you here. You
809 know what their record is. Amber are you and Nick? the only two relatives that work here?
810 As far as Nick. Ryan are the rest of you related to each other?

811 **01:17:27** **TRACEY:** We're all brothers.

812 **BILL WHEELER:** Well, alright.

813 (inaudible & laughter)

814 **BILL WHEELER:** The union may not want you to go cause your Kurt's brother. But,
815 they can't do that. Now. Nick, you may want to vote but you can't vote cause he's Joe's
816 son. That's immediate family.

817 **JOE NEEDHAM:** So. Um, but you got to realize something just as people here. What
818 about all the other ones that ain't here that don't get a vote. They won't have a job. Very
819 well put.

820 **BILL WHEELER:** That's the inventory I'm asking to help. And look at all of those
821 people who helped you with your job. So you're voting for them also. Very, very good
822 point sir.

823 **TRACEY:** And there families.

824 **BILL WHEELER:** Sir?

825 **TRACEY:** And their families.

826 **BILL WHEELER:** And their families. Well I apologize if I offended any of you with
827 anything I've said. I'm not here to offend anybody.

828 **UNKNOWN:** We're pretty thick skinned.

829 **BILL WHEELER:** But now it's nice to be back in the quad city area. I worked at, I
830 worked at a case in Moline it's called I believe Luther hospital?

831 **NICK:** Yup.

832 **BILL WHEELER:** That was back it had to be 30 years ago. Had to be back in the early
833 80s.

834 **UNKNOWN:** It's been gone for 20.

835 **BILL WHEELER:** I asked for ? but they tore it down. She said it's called trinity hospital
836 or something.

837 **JOE NEEDHAM:** Where you were is gone.

838 **BILL WHEELER:** It's gone? Ok. Well the union didn't win but it's surprising the
839 administrator, it took the whole hospital. He didn't know his employees. I had the guy
840 haul the coffee cart around the whole hospital just to learn his employee's names. How
841 can you ask people to vote for you if you don't know their name? so, that was a long time
842 ago. I was a young man.

843 **UNKNOWN:** That was a long time ago.

844 **BILL WHEELER:** anyway, ladies and gentlemen guys. I don't wanna see anything. I
845 told you I'm not here do all this talking. I told you I'm going to tell you everything I'm
846 allowed to tell you. And is there something else you want to say. We can ask you know we
847 can ask Joe and Nick to leave if you want them to leave, and if there's something you just
848 want to ask me.

849 **01:19:48 TRACEY:** I got a couple things I'd like to say.

850 **BILL WHEELER:** Sure.

851 **TRACEY:** When I got in and I got in with Ian and I got into organizing. And they made
852 everything sound real, real good you know. Blah blah blah blah blah. Looking back if they
853 would have told me half the shit I wish they would have told me the truth. Add spit in their
854 eye. But until I quit my job and was in there signing my paperwork I didn't find out. I
855 ended up owing \$960 right there on the spot to buy my card. And six months' worth of
856 dues. I don't know what they're promising you guys comma but there's a pretty good
857 chance. You're gonna be asked to come with some cash right there. Now I can't guarantee
858 that but that's what they did to me. It's there's a lot of things there that pissed me off. You
859 know I can have a guy, most of us here can run him out in a new body. You're getting in
860 the union they're gonna have a guy sitting there that's running a roller. Hitting the damn
861 horn trying to start the son of a making the same rate you are. And they've been doing it
862 for 20 years. And that's just what you have to swallow every day dealing with you know
863 working on that shit. You know when you're. You know a month and a half ago I lost my
864 dad. I'll tell you what it took me back to when I worked at Brandt working with these
865 guys. I know who had bowling League the night before I know who wasn't going to be
866 worth shit. I know that I can stop on a carpenters scaffold 'cause I've known him for years.
867 You go to the union and its twenty faces every day, you're just a number. You don't know
868 any of these guys you know. When all three boys showed up at Brandon on Visitation,
869 they hit me. Joe called me. When ^{(b) (6), (b) (7)(C)} was born I'd only been here for months. I got a
870 package in the Mail with ^{(b) (6), (b) (7)(C)} name and birthday on it. It made me feel part of
871 something and at the end of the day I'd rather have all day long and go somewhere and you
872 know be a number. I can go to Kenny and we can tell each other to go fuck up all day and
873 we'll laugh whatever. You tried doing that shit with these bigger companies and. There's
874 always someone there to fuck you someone there to make you feel like shit. Watching the
875 theater grabbing the handle right, watching to see if you're doing this. If you want to live
876 like that and underneath that bullshit I don't know what to tell you. I sure as hell wont. No
877 this is what I like. This is what it's all about. This is what makes you work a little harder.
878 And plus whatever they're telling everybody that they're going to give them. Try to get that
879 written in contract writing. Because I'd almost bet my next four paychecks, you ain't gonna
880 fucking get it.

881 **BILL WHEELER:** Not on the 1st contract

882 **TRACEY:** You ain't gonna get shit.

883 **BILL WHEELER:** Unions have their favorite expression. Will get it for you in the next
884 contract

885 **TRACEY:** Yeah

886 **BILL WHEELER:** Anyone else wanna say anything? by the way I love your hat.
887 (Laugh)

888 **BILL WHEELER:** I stayed around the truck stop last night and I roamed around looking
889 for hats like that.

890 **AMBER:** I kind of feel like with what's going on they've already won a little bit. Creating
891 the animosity and the questions in all of our lives of whose with and who's not us. And
892 who can I talk to unions can say bullshit and say anything to anyone. You guys I've
893 worked with you for four years. I've trusted most of you with my safety. And you did the
894 same to me. And were wondering if we can trust each other now. Over what that's what it
895 means when you sign up. They don't care about you guys. I mean, that's what they're doing
896 to us.

897 **BILL WHEELER:** they sure want you to believe that that's it.

898 **AMBER:** Well they've done it to us.

899 **BILL WHEELER:** Joe, Nick, and Kurt that's your brother right?

900 **AMBER:** M hm, oh yeah

901 **BILL WHEELER:** They want you to believe that.

902 **NICK:** (inaudible) dad, so yeah I don't put up with any of that union shit.

903 **UNKNOWN:** This votes gonna sink the ship and we shouldn't be the ones to determine
904 that, in my opinion.

905 **UNKNOWN:** Well we got 3 days.

906 **UNKNOWN:** I think that's what this is all about, honestly.

907 **01:25:13 BILL WHEELER:** Secret ballots I don't know how you would know how each other
908 would vote. Like I said I can't believe you would allow that to happen to each other. One
909 pile of votes on my count those votes 15 votes. And it would have been 16 but apparently
910 you lost someone yesterday. Or I should say someone committed job suicide. But you
911 have work rules that you have to fight under. And you know what you can and cannot do.
912 And bottom line that gentleman broke the law. And I don't care union or no union. And the
913 union might say aw, we'll let that happen. I've been around unions all my life. They have
914 five laws and constitutions, and they know that if you have a set of work rules you have to
915 agree. And if you break those rules you lose your job and that's sad I don't wanna see
916 anybody losing their job. Say your pressure that person and his family. I did last night. I
917 hit my knees and I didn't even know the person but you know John Kennedy said a
918 mistake doesn't become a mistake unless you refuse to correct it. And you have a chance
919 somebody obviously started this all again. For whatever reason they made a mistake
920 period now you have the chance to right that. As Amber said to vote for each other to take
921 away that distress from. You got to in the work that you do you depend on each other so
922 much. Or the point that this gentleman made, you're not only voting for yourself. What did
923 you do before?

924 **UNKNOWN:** Same here.

925 **BILL WHEELER:** Same as before?

926 **UNKNOWN:** I love it here.

927 **UNKNOWN:** Worked on her stuff for 18 years... 19 years.

928 **UNKNOWN:** Seems like bullshit every job site we go to we get harassed by these union
929 guys

930 **BILL WHEELER:** And that's sad 'cause their customer is so grateful to have you there.
931 They don't wanna do anything to upset the situation, but they sure don't want those people
932 there.

933 **JOE NEEDHAM:** Well if you got a B.A., a union B.A. flat out in your face telling you,
934 hey. You're taking food right out of union mechanics. Well asshole... I'm here. Your
935 union mechanics must not been able to do it so get out of my face.

936 **BILL WHEELER:** Right.

937 **UNKNOWN:** we've been putting it up with this here since what? We voted them out last
938 year? Two years ago? It cost Ian excavating shit I load of money because Jared and I can't
939 go to it. And lots more money out of our pockets.

940 **AMBER:** but they don't want your voice to be heard.

941 **JOE NEEDHAM:** I don't give a fuck I'll say whatever I want to whoever I want.

942 **AMBER:** Well that's the kind of shit that we're dealing with they don't want to represent
943 you

944 **BILL WHEELER:** By the way there's anyone in this room that wants to stick up for the
945 union, you're welcome to speak up. That's you're right. I'm not here to take anybody's right
946 away. It's just, I don't know... I mean. By the way I hope I didn't offend anybody when I
947 something those trump hats yesterday.

948 **UNKNOWN:** I had? Show up with a bunch of them this morning

949 **UNKNOWN:** Can you explain, I understand. But for some who might not. Can you
950 explain percentage like lets take a set hourly wage, you know on Needham right now,
951 were not we get paid by the union. What, verses if we go union what percentage of that
952 hourly rate we gain or lose and what Joe has to pay.

953 **BILL WHEELER:** I thought we covered that in the last handout.

954 **UNKNOWN:** Maybe, maybe it's in here.

955 **BILL WHEELER:** The last one here says union passes out flyers showing union wages.
956 And then it kind of talks about it. But Joe, do you want to answer that question?

957 **JOE NEEDHAM:** What exactly, how much is their dues?

958 **UNKNOWN:** Well, say guys making will use smaller, 20 bucks an hour right now. And
959 we have our health insurance which is free. And we opt to get into retirement. If we are
960 union you know how much do we gain or lose. How much do you have to cover. Or is that
961 ... is that

962 **JOE NEEDHAM:** That will all be in the negotiations

963 **BILL WHEELER:** Like I said you can end up with more of the same or less

964 **UNKNOWN:** Right.

965 **01:30:26** **JOE NEEDHAM:** When we got out you lose 3% off the top of your dues. You make
966 \$20.00 an hour you lose \$0.60 an hour.

967 **UNKNOWN:** That's what I explained.

968 **JOE NEEDHAM:** And then on your insurance. one thing that I would want to know is
969 are they giving me a years worth of insurance? If it's not going to cost me any hours?
970 Because it's basically. Your insurance was for by the hour you worked. The way I
971 understand it. If you are one of the guys that worked here for over 2000 hours a year or
972 high teens, 18/19, you can buy the top level insurance. They changed that right at the end
973 the way I understand it. If you're one of the lower guys like Durthams and work the
974 quarries and barely make 1200 hours a year, you can buy the lesser insurance. So when
975 your dollar amount goes into your account, you buy the hard dollar insurance in your
976 account goes dry period you gotta open your wallet in pay for it.

977 **UNKNOWN:** Yup.

978 **JOE NEEDHAM:** so the thing you need to know is if you're gonna vote from the union
979 and you're gonna quit. Go there. How many hours worth of? Are they giving you a years
980 worth of insurance to let you bank hours? So we have a slow year and you don't have to
981 pay for your insurance out of your pocket right away.

982 **BILL WHEELER:** No, that's first hand out

983 **JOE NEEDHAM:** Yeah they guaranteeing you the first day in church the day you start?
984 Are you gonna have to bank, get your hours up for 1/4 at two, or have to pay insurance out
985 of pocket?

986 **BILL WHEELER:** There are also some plans that you have to be in the union for a
987 period of time before even become eligible period the teamsters used to be like that.

988 **UNKNOWN:** 350 hours.

989 **JOE NEEDHAM:** What did they do with you guys Dean? You and Brandon do you guys
990 remember?

991 **UNKNOWN:** We weren't covered. I don't remember how long it was

992 **JOE NEEDHAM:** 'cause they got organized in 16

993 **UNKNOWN:** Then we had our credits build up . And we were told we were left we could
994 keep using those credits. And I don't believe that actually happened

995 **TRACEY:** Yeah I went one year washed and clean . Like I had 30 something 1000
996 credits.

997 (mumbles)

998 **BILL WHEELER:** And the other thing is what card they giving you. I know there's an A
999 and B and a Permit list.

1000 **UNKNOWN:** They gave Brandon in a permit and that was it

1001 **BILL WHEELER:** OK so they give Brandon and Ian a Permit.

1002 **UNKNOWN:** Ok, I got something to say about the permits. I know a lot have been there
1003 for 16-17 years. I don't know doing what. There's a lot of permits, and that work a lot of
1004 freakin' hours. And never got a card. Until it come time to vote officer Jim in the union.
1005 that's one thing. That's how I got my card. Month before the election came up, they came
1006 up to me and said, do you want a card?

1007 **BILL WHEELER:** Was that the Ward election?

1008 **UNKNOWN:** Huh?

1009 **BILL WHEELER:** Was that the Ward election?

1010 **UNKNOWN:** No, it was the one before.

1011 **UNKNOWN:** Permit hands can't vote for the officer election.

1012 **UNKNOWN:** you're basically on probation 150

1013 **UNKNOWN:** Yeah because they told us we had to and I kept skipping it and they kept
1014 threatening me.

1015 **UNKNOWN:** I skipped all of them when I got my card

1016 **UNKNOWN:** Yeah see they were smart.

1017 **UNKNOWN:** But it was like ...(mumble)

1018 **TRACEY:** But when you're in training.

1019 **UNKNOWN:** I know several permit hands they got their cards basically from that
1020 scenario.

1021 **BILL WHEELER:** So another thing about the cards. what are they offering you right
1022 now? If they're offering you Permit, the A list has to be 100% cleaned off, with your
1023 qualification. The B list has to be cleaned off and then they go to the permit hands. And
1024 the one question I would ask them is when to the permit hands get issued here.

1025 **UNKNOWN:** Like a week ago.

1026 **01:35:11 BILL WHEELER:** But this wet weather I bet if you weren't on A card. Ask them, when
1027 the A list was cleaned off. In what month the B list was cleaned off and what month the
1028 permit list is cleaned off

1029 **UNKNOWN:** they have to show you

1030 **BILL WHEELER:** But ask them that but card are you getting? 'cause if you ain't on the
1031 A list, you're like just as bad as it was weather wise. You ain't getting out for a long time .
1032 And you still have to rotate from the bottom to the top. And I know that when Bush was in
1033 there. Bush raised a lot of trouble with all the union's not just 150. And the list is close to
1034 being correct if they've ever had been because of the Bush administration. That was from
1035 Marshall Douglas. They used to be able to say yeah well I couldn't get ahold of these guys.
1036 There's callback rights. But now the list is run you know if you have excavator on your
1037 card, your number 5, you're the first one with it they have to call you out. They can't jump
1038 down to their buddy at 50 you know like they used to in the older days. So I mean the list
1039 is. They don't list like they used to. So what kind of card would you get if you don't have

1040 hardly any hours and you don't run a machine at all. That's what I ... that's what you gotta
1041 ask them.

1042 **UNKNOWN:** they wouldn't give you one you'd have to go up to the apprenticeship.

1043 **TRACEY:** Oh go give you whatever card until they go to give you a card.

1044 **BILL WHEELER:** And like I said before make sure it's in contract in in writing.
1045 Because I guarantee you from my personal experience their word ain't no good. whatever
1046 you're doing please just vote. Remember a lot of people can't vote. If they challenger vote
1047 just understand that they're trying to take something away from you before they even ask
1048 you to be your member. And even if they challenge your vote and won the election. First
1049 thing they make sure of is that you'd have to be in their union.

1050 **UNKNOWN:** And if we tell them to go fuck themselves?

1051 **BILL WHEELER:** Sit there and tell them that it's a physical impossibility.

1052 (laughs)

1053 **UNKNOWN:** If we go union my tool box going out the door cause I ant paying nobody to
1054 work.

1055 **BILL WHEELER:** You guys can. This all can be over on Friday. Don't have to worry
1056 about it if we blow them out of water were not going to waste their time.

1057 **UNKNOWN:** Who's to say we dont blow them out of the water and those who wanna join
1058 can go join them later on?

1059 **BILL WHEELER:** That you're right. But you know.

1060 **UNKNOWN:** The union wants them so bad then they'll take em with them. I don't know
1061 why I have to be drug with.

1062 **TRACEY:** That what you just said there. If anyone's for this chances are they're going to
1063 go to another company as soon as it's over with. So it's going to be a decision for me and
1064 fuck you to everybody else. Everybody else around here and their family and kids alone.
1065 'cause I mean look around right now. And realize, if you're going to make a selfish move
1066 like this karma for your own bullshit instead of guyon doing it on your fucking own. Or
1067 permanent like everybody else here has you're here fucking everybody else. It's a, I
1068 worked pretty fucking hard to get where I am at this point.

1069 **AMBER:** We all have.

1070 **TRACEY:** I'm just saying me personally, then you can fucking poke a bear good luck.

1071 **AMBER:** you know I guess it comes down to it this is what you wanna do. If you want to
1072 be part of the union go be part of the union. But why, none of us hate each other, I think
1073 we all get along pretty damn well. You know they could promise you the world but they're
1074 only gonna give you but they have to give you an they might not even do that. So you
1075 have a choice to make. you can fuck us over something (inaudible). I mean that's what
1076 you're doing you're basically punching all of us in the mouths. And that's not fair. If you
1077 want to leave in join the union, please do. But I'm sick of inaudible and stupid stuff that
1078 keeps coming up and all of these things we have to deal with every time this happens. It's
1079 getting old period we just wanna work and get our stuff done. Not keep playing this god
1080 damn game all the time.

1081 **01:40:26** **UNKNOWN:** I just don't know why anybody would want to vote back into the union after
1082 everything they've done towards, you name it I mean you're on Facebook getting blasted
1083 by you know whatever group. But now they want you back in the union? Why would you
1084 ever go back to that? That's complete bullshit. The same goes for what they've done to our
1085 small town. Some guys don't come to walk out everyday but when they set that rat up. It's
1086 a disgrace, I mean it's a joke. Right in front of the business like that I mean why 40 Ryan
1087 and associates. 122 million dollars they make. What a joke. How much of that goes to that
1088 shit. That just drives me nuts. Those three guys that sit there every single day.

1089 **BILL WHEELER:** Is that Ryan?

1090 **UNKNOWN:** Yeah.

1091 **BILL WHEELER:** Yeah, Joe drove by there yesterday.

1092 **NICK:** Every single day and it's I got damn safety hazard as well. And they don't get that.
1093 Drive by there in a semi and try to get by that intersection.

1094 **UNKNOWN:** Hug the white line

1095 **BILL WHEELER:** I know. It's the perfect example, if they can't get you to play ball
1096 with them then they try to run you out of business. That's exactly what they're trying to do.
1097 I mean I saw Teamsters do that all the time. Informational picketing.

1098 **UNKNOWN:** That's the thing, aren't they supposed to get out and hold the sign?

1099 **BILL WHEELER:** You know if you stop and ask those people where they're working,
1100 they probably aren't. they're making money from the union for doing it.

1101 **NICK:** What did you tell them at Portillios that day? When they got in the van at 2:00
1102 o'clock and you were still working?

1103 **TRACEY:** Oh fuck.

1104 **NICK:** You said were here until 5 why don't you stick around.

1105 **TRACEY:** when I was at Brant they had a I was out in I don't know plant in blank and
1106 there's a young kid and he's sitting there if I can blow up this rat. And it was like a blow up
1107 toy fucking deal. It was a 7 foot fucking tall rat, you know. I ask this kid, I walked up to
1108 him and he got all nervous. You know I'm like I'm not gonna fuck with you I'm just asking
1109 you what are you making. And he says oh they're paying me like 7.50 an hour right now.
1110 Are you in the union or what he goes well they keep on promise I'm going to be in blah
1111 blah blah. I said grocery getter you're running around. And he says well I'm actually out of
1112 attempt service. And I go let me get this straight, you're an attempt service blown up at 7
1113 foot fucking rat, looking like you're ready to pass out for 7.50 an hour? And he just looked
1114 at me like what the fuck my supposed to say to that. And I'm like I don't know what the
1115 fuck you're supposed to say to that.

1116 **BILL WHEELER:** Gentleman anyone want to say anything else? Joe you want to say
1117 anything?

1118 **JOE NEEDHAM:** I guess the only thing I wanted. Tim brought up Tracey's picture on
1119 Facebook and period I-80 was bad mouthin'. Facebook for using us. You know who they
1120 used to put asphalt down for the very first time? Taylor Ridge asphalt 9, non-union. Here
1121 is one of the supervisor's quotes. "union unions always picked Ryan the union guys can't
1122 be worth a Buck so we might as well use non-union". 'cause union does... or Ryan does all

1123 their mechanical work. You know they think they're (inaudible). They just lost a customer
1124 up there. General asphalt used to do 100% of their work. No questions asked they never
1125 got bids.

1126 **UNKNOWN:** The guy who owns Taylor Ridge used to work for general asphalt. They
1127 screwed him over so he started his own.

1128 **JOE NEEDHAM:** Yeah Taylor Ridge is up there 100% non-union. First time that ever
1129 happened. And I guarantee you that's from Facebook in that publicity ****. You kick
1130 somebody in the nuts they ain't gonna get back up and kiss ya. They're get back up and
1131 fight. huh

1132 **BILL WHEELER:** Social media amazes me. I know I'm a Dinosaur I don't have any
1133 social media. I don't do texting. I have a flip phone. Jerry Jones is a flip phone, Warren
1134 Buffett has a flip phone, and so do I. That's all I need yeah I have an iPad, if someone
1135 wants to email me fine but the amount of disrespect that I see going on, on social media
1136 even in here. Once again I just don't understand the foundation you or your children. Stuff
1137 like that. Yeah, I just don't get it. Look around, what your gonna have a president for me.
1138 Whatcha gonna have a gay president so you can have a first man as opposed to a first
1139 lady? Yeah that AOC, that black girl from New York that's too young. I actually heard
1140 her David say the other day, we gotta keep all these jobs in America. Everything needs to
1141 be made in America. She says my television has built in antenna. She says I don't know
1142 where antenna is

1143 **GROUP:** laugh.

1144 **BILL WHEELER:** Well enough of me if there's anything else.

1145 **UNKNOWN:** I got one thing. Retirement may be a concern. there's enough of you here
1146 they're still young enough. From previous experience if you can do it, maximize your
1147 401K. Don't pay any attention about how it goes up or down. Don't panic. You'll be
1148 surprised in the end. You may get shaky when it goes down. With experience it goes back
1149 up. And I had experience with it. Glad I did what I did and if you can do it. Max it, you
1150 don't even realize it's missing on your check.

1151 **UNKNOWN:** And he bought the same house a couple time.

1152 (laughs)

1153 **01:46:19 BILL WHEELER:** Gentlemen good luck. Good luck on your election

1154 (Various thank you' s)

1155 (Inaudible) people exit.